S. HRG. 98-1180

AMENDING THE NATIONAL HISTORIC PRESERVATION ACT; MISCELLANEOUS CONVEYANCES; FEE EXEMPTIONS; AND ASSISTANCE TO VOLUNTEER GROUPS

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS AND RESERVED WATER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 2889

AN ACT TO AMEND THE NATIONAL HISTORIC PRESERVATION ACT, AND FOR OTHER PURPOSES

H.R. 2982

AN ACT TO EXEMPT IRRIGATION CONVEYANCE SYSTEMS FROM FEES AND CONDITIONS UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976, AND FOR OTHER PURPOSES

S. 2692

A BILL TO EXEMPT WATER CONVEYANCE SYSTEMS FROM FEES AND CONDITIONS UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976, AND FOR OTHER PURPOSES

H.R. 2838

AN ACT TO AUTHORIZE THE SECRETARIES OF THE INTERIOR AND AGRICULTURE TO PROVIDE ASSISTANCE TO GROUPS AND ORGANIZATIONS VOLUNTEERING TO PLANT TREE SEEDLINGS ON PUBLIC LANDS, AND FOR OTHER PURPOSES

JUNE 28, 1984

Printed for the use of the
Committee on Energy and Natural Resources

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AMENDING THE NATIONAL HISTORIC PRESERVATION ACT; MISCELLANEOUS CONVEYANCES; FEE EXEMPTIONS; AND ASSISTANCE TO VOLUNTEER GROUPS

THURSDAY, JUNE 28, 1984

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:13 a.m., in room SD-366, Dirksen Office Building, Hon. Malcolm Wallop, presiding.

Present: Senators Wallop and Hecht.

Also present: Tony Bevinetto, professional staff member; and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. Good morning, I think! Another one of those late nights where the Senate did nothing all day and decided not to work until 9 o'clock last night and did a little bit after that, and then I come over this morning and find that the elevator was up late last night, too, and decided they don't want to work more than 12 hours each day.

The Subcommittee on Public Lands and Reserved Water will this morning hear testimony on four bills—H.R. 2889, to amend the National Historic Preservation Act, and for other purposes; H.R. 2982, to exempt irrigation conveyance systems from fees and conditions under the Federal Land Policy and Management Act of 1976, and for other purposes; S. 2629, to exempt water conveyance systems from fees and conditions under the Federal Land Policy and Management Act of 1976, and for other purposes; and H.R. 2838, to authorize the Secretaries of the Interior and Agriculture to provide assistance to groups and organizations volunteering to plant tree seedlings on public lands and for other purposes.

Without objection, I will place a copy of each of these bills into the hearing record and state that the record will remain open for 2 weeks during which time written testimony on any of those measures can be submitted to the subcommittee.

I am going to ask each witness to limit his or her oral testimony to 5 minutes. Additional details may be provided in writing and your full statement will be made a part of the record.

We will hear testimony on H.R. 2889 first, then S. 2692, and H.R. 2982, and last will be H.R. 2838.

Let me turn to H.R. 2889 and explore an idea with those people interested in this bill. As many of you know, Senator McClure is not only the Chairman of the Senate Energy and Natural Resources Committee, but he is also Chairman of the Senate Appropriations Subcommittee on the Interior and related agencies. He has an interesting idea to establish a National Capital arts and cultural affairs program.

What if there were a grant program under the National Endowment for the Arts to support artistic and cultural endeavors in the National Capital Region? I recognize the concern of some members of this body that we not begin earmarking funds of either the National Endowment for the Arts or the National Endowment for the Humanities. We would authorize a separate program with a separate authorization for appropriations and would not in any way jeopardize regular program funds available to the arts.

To those other members of the Senate who may be concerned about expanding the role of the Government in art, I would say that this idea merely provides form and structure to what has been an ad hoc support for a number of organizations in this area which we have funded through the years through the Interior appropriations bill. Through the National Park Service we currently support Wolf Trap, Ford's Theater, the Folger Theater and the Corcoran Gallery. Through the Smithsonian Institution we support the National Symphony Orchestra and the Washington Opera Society. At one point during the markup process on the fiscal year 1984 Interior bill the House included funds for Arena Stage and during consideration of the continuing resolution, the Senate added money for the Capital Children's Museum.

The problem from my perspective as Chairman of the subcommittee with jurisdiction over the Department of the Interior is twofold. First, organizations seek line item appropriations lacking authorization. In some instances, as with Folgers and the Corcoran, authorization occurred after the fact. In others, annual bill language is required in the appropriations bill as there is no authorization.

Second, the amounts provided through the appropriations process are entirely arbitrary. No application and review process exists which would allow a determination as to what each organization actually requires to support specific goals for a particular year, and in some instances, there is minimal accounting of the expenditure of the funds.

We would expect that the National Endowment would not request funds for this new program. Indeed neither the Park Service nor the Smithsonian Institution request funding for the organizations we fund through these accounts. Funding will no doubt still require a congressional add-on, but at least if we do add the money, there will be a Federal agency charged with the responsibility for accepting and reviewing the applications and making the determination on the proper expenditure of these funds.

An authorization ceiling should be more than sufficient to cover all organizations which are currently being funded through the In-

terior appropriations bill and also allows for the inclusion of a few others which meet the criteria that would be established.

The idea would be to establish under the chairman of the National Endowment for the Arts a program to support and enhance cultural activities in the National Capital region. Grant eligibility would be limited to organizations of demonstrated national significance which meet most of or all of the following criteria—one, an annual operating budget in excess of $1 million; two, an annual audience or visitation of at least 200,000 people; or three, a paid staff of at least 100 persons.

Colleges and universities, public or private, would not be eligible for grants. Organizations would be limited to $1 million annually. The National Endowment would establish the application process with a review panel and a separate authorization for appropriation would be made.

I would appreciate any consideration of this idea and your comments on it. You need not respond today, but let me know if you think the idea has any merit, and we have as I said 2 weeks before the hearing record is closed, but one thing that is important, I think everyone especially in a year of expanding budget deficits and decreasing control over the expenditures for the Federal Government would like to end the ad hoc approach to funding these activities and to provide a little accountability for those which do receive funds.

Let me now turn to the administration witnesses and we will start with Deputy Assistant Secretary for Natural Resources and Environment in the Department of Agriculture, Doug MacCleery; Deputy Director of the National Park Service, Mary Lou Grier; Assistant Director for Land Resources of the Bureau of Land Management, Frank Edwards; Commissioner Lester L. Mitchell, Public Building Service, Government Services Agency.

If you would please approach the desk, if you would make all the comments on all the bills that you are here to comment on, then I think we can let you go, and I have here before we start the statement of Senator Armstrong on S. 2692 and a statement from Senator Johnston on H.R. 2889 which I will insert in the record. Now Mr. MacCleery.

[The texts of the bills and prepared statements of Senator Armstrong and Senator Johnston follow:]

II

98TH CONGRESS
2D SESSION

H. R. 2889

IN THE SENATE OF THE UNITED STATES

JUNE 6, 1984

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To amend the National Historic Preservation Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 306 of the National Historic Preservation Act (16 U.S.C. 470w–5) is amended—

(1) by adding at the end thereof the following new subsection:

"(g) Within twelve months after the date of the enactment of this subsection, the executive director of the National Building Museum shall prepare and submit to the Congress a report concerning the activities of the museum. The report shall include—

"(1) recommendations for the long-term management, staffing, and funding of the museum and alternative approaches for its permanent administration, including an analysis of whether the museum should continue in its present organizational and operational status; and

"(2) recommendations for administrative and legislative actions which may be necessary to further the purposes of the museum.";

(2) by striking out "(c)" in subsection (c) and inserting in lieu thereof "(c)(1)";

(3) by adding at the end of subsection (c) the following new paragraph:

"(2)(A) The Secretary is authorized to provide nonmatching grants-in-aid to the Board of Directors of the National Building Museum in amounts not to exceed $1,500,000 for each of the fiscal years 1985 through 1988, for the purpose of maintaining the operations of the National Building Museum during the time the building in which it is located is being renovated and prepared for museum use.

"(B) For the purposes of carrying out this paragraph there is authorized to be appropriated not more than $1,500,000 for each of the fiscal years 1985 through 1988. Appropriations made pursuant to this paragraph may be

made without fiscal year limitation, and shall remain available until expended.

"(C) Authority to enter into contracts or make payments under this paragraph shall be effective for any fiscal year only to the extent that appropriations are available for that purpose."; and

(4) by striking out "National Museum for the Building Arts" in subsection (a) and inserting in lieu thereof "National Building Museum".

SEC. 2. Section 212(a) of the National Historic Preservation Act (16 U.S.C. 470t.(a)) is amended by striking out the second and third sentences and inserting in lieu thereof "To carry out the provisions of this title, there is authorized to be appropriated not more than $2,500,000 for each of the fiscal years 1985 through 1989.".

SEC. 3. The National Historic Preservation Act is amended by adding at the end thereof the following new section:

SEC. 308. (a) The Congress recognizes—

"(1) the unique and significant role of The National Learning Center (a private nonprofit institution organized and existing under the laws of the District of Columbia, hereinafter in this section referred to as the 'Center'), and its two operating entities, the Capital Children's Museum, and the Learning Opportunity

Center, in meeting the educational and esthetic needs of people of all ages in Washington, District of Columbia, and from throughout the United States and other countries, by providing opportunities for experimental learning and cultural and esthetic awareness through participatory activities;

"(2) the success of the Center in attracting increasing numbers of visitors and support from the private sector; and

"(3) that Federal technical and financial assistance is needed to help provide a basis for the future development of the Center, to help assure adequate maintenance of its physical facilities, and to help encourage increased support from other public and private sources.

"(b)(1) Within eighteen months after the date of enactment of this section, the President of the Center, in consultation with the Secretary of the Interior, the Secretary of Education, the Administrator of the General Services Administration, and the Secretary of the Smithsonian Institution, shall prepare and transmit to the Congress a comprehensive management plan for the Center. The Center management plan shall include—

"(A) recommendations for the development, use, security, and maintenance of the buildings and grounds

of the Center, including alternatives for the adaptive use of any structures which have historical significance;

"(B) recommendations for the long-term management, staffing, and funding of the Center and alternative approaches for its permanent administration, including an analysis of whether the Center should continue its present organizational and operational status; and

"(C) recommendations concerning exhibits and collections (including their acquisition, curation, conservation and interpretation), educational and esthetic programs and related recreational activities, research and training, fund raising, publications and other forms of communications, and cooperative activities with other institutions and public and private agencies.

"(2) The management plan shall take into account both the short-term needs and the long-term growth of the Center. The plan shall be divided into five year increments over a twenty year period, and should include recommendations for additional administrative and legislative actions which may be necessary to further the purposes of the Center.

"(c)(1) The Secretary is authorized to make grants-in-aid to the Center of not more than $500,000 for each of the fiscal years 1985 through 1988, for the maintenance and security of the buildings, grounds, and contents of the Center.

"(2) For the purposes of carrying out the provisions of this subsection there is authorized to be appropriated not more than $500,000 for each of the fiscal years 1985 through 1988.

"(3) Authority to enter into contracts or make payments under this subsection shall be effective for any fiscal year only to the extent that appropriations are available for that purpose.".

SEC. 4. Nothing in this Act shall be construed to prevent the National Building Museum, described in section 306 of the National Historic Preservation Act, or The National Learning Center, described in section 308 of such Act, from obtaining Federal funds from any other source.

SEC. 5. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority described in section 402(a) of the Congressional Budget Act of 1974 shall be effective only for fiscal years beginning after September 30, 1984.

Passed the House of Representatives June 4, 1984.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

II

98TH CONGRESS
1ST SESSION

H. R. 2982

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10 (legislative day, NOVEMBER 7), 1983

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To exempt irrigation conveyance systems from fees and conditions under the Federal Land Policy and Management Act of 1976, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. As used in this Act, the term "the Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.).

SEC. 2. Section 501 of the Act is hereby amended by adding at the end thereof the following new subsection:

"(c) There are hereby granted rights-of-way for irrigation systems, as described in subsection (a)(1) of this section, constructed prior to October 21, 1976, and in use during the period beginning on such date and ending on October 21, 1983, for agricultural, livestock, or private domestic purposes and which traverse public lands or lands within the national forest system. Grants made by this subsection are supplementary to, and not in lieu of, any other grants made by previous Acts: *Provided,* That each such previous grant of right-of-way shall remain in full force and effect unless the holder thereof notifies the Secretary or Secretary of Agriculture, as appropriate, that he elects to be governed by the provisions of this subsection, in which case such previous grant shall be deemed to have been relinquished and shall terminate. Any grant of right-of-way for an irrigation system described in the first sentence of this subsection which is based on an Act of Congress enacted prior to October 21, 1976, shall be subject to fees or payments to the United States, or permits or other rights-of-way authorization, only to the extent such payments or authorization are required by the Act of Congress under which the grant is claimed. No grant made by this subsection shall be subject to any fees or payments to the United States or to permits or other authorization. Each such grant shall continue in effect so long as the relevant system is used solely for agricultural, livestock, or private domestic pur-

poses: *Provided further,* That the holder of such a grant and his successors shall comply with the following requirements:

"(1) Each such grant shall be recorded with the appropriate Secretary or Secretaries no later than January 1, 1988, and every thirty years thereafter or, in the event of a transfer of such grant after January 1, 1985, no later than thirty days after the date of transfer. Recordation required by this paragraph shall be such as will provide the appropriate Secretary or Secretaries information concerning the location and characteristics of the irrigation system as necessary for proper management of the public lands and lands within the national forest system, and shall include the name and address of the holder of the grant; in the event of any change in such address, the holder shall notify the appropriate Secretary or Secretaries within thirty days.

"(2) The holder of each such grant shall allow the Federal Government and the public free and unrestricted access to, upon, and across the right-of-way for all purposes not inconsistent with the exercise and enjoyment of the right-of-way.

"(3) All physical facilities on a right-of-way granted by this subsection shall be constructed, reconstructed, repaired, and maintained in a manner which (i)

minimizes damage caused by the physical facilities themselves to scenic and esthetic values and fish and wildlife habitat, and otherwise protects the environment; (ii) protects property, lives, and health, including that of other lawful users of lands adjacent to or traversed by such rights-of-way; (iii) does not unreasonably obstruct or interfere with the interests of individuals living in the general area traversed by the right-of-way who have historically relied on the fish, wildlife, and other biotic resources of the area for subsistence purposes.

"(4) The holder of each such grant shall indemnify the United States against any liability for damage to life or property arising from the holder's occupancy or use of the granted right-of-way: *Provided,* That upon relinquishment of such a grant, such indemnification shall thereafter no longer be in effect.

Nothing in this subsection shall be construed by implication to exempt any right-of-way granted by this subsection from applicable Federal or State standards for public health and safety, air and water quality, or environmental protection or from any other applicable provision of State or Federal law. Nothing in this subsection shall be deemed to confer any power or authority to regulate or control in any manner the reservation, appropriation, use or diversion of water for agri-

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cultural, livestock, or private domestic purposes. Nothing in this subsection shall be deemed to confer any right or claim to the acquisition or use of water, or to require the conveyance or transfer to the Federal Government of any such right or claim. The appropriate Secretary may act to terminate or suspend or to abate the use of a right-of-way granted by this subsection, pursuant to section 506 of this Act, only upon abandonment of such a grant or for noncompliance with the provisions of this subsection. Upon relinquishment, abandonment, or termination of such a grant, the holder shall within reasonable time cease use of the right-of-way and remove all structures and improvements except those owned by the United States, and shall restore the site insofar as reasonably possible, unless the appropriate Secretary agrees in writing to wholly or partially waive such requirement. Structures or improvements not so removed within a reasonable time shall become the property of the United States. Mineral and vegetation material (including timber) within a right-of-way granted by this subsection are reserved to, and shall remain the property of, the United States, but may be available for use on the right-of-way in case of emergency.".

SEC. 3. Section 505 of the Act is hereby amended by adding at the end thereof the following new subsection:

"(c) This section shall not apply to rights-of-way granted by subsection (c) of section 501 of this Act.".

Passed the House of Representatives November 8, 1983.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

II

98TH CONGRESS
2D SESSION

S. 2692

To exempt water conveyance systems from fees and conditions under the Federal Land Policy and Management Act of 1976, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 21, 1984

Mr. ARMSTRONG introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To exempt water conveyance systems from fees and conditions under the Federal Land Policy and Management Act of 1976, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. As used in this Act, the term "the Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.).

SEC. 2. Section 501 of the Act is amended by adding at the end thereof the following new subsection:

"(c)(1)(A) There are granted rights-of-way which traverse public lands or lands within the national forest system for facilities and systems for the impoundment, storage,

transportation, or distribution of water, as described in subsection (a)(1), constructed prior to January 1, 1985, and in use or placed into use during the period beginning from October 21, 1976, and ending on January 1, 1985, including (a)(1) rights-of-way with technical difficulties relating to proof of original grant.

"(B) Grants made by this subsection are supplementary to, and not in lieu of, any other grants made by previous acts. Each such previous grant of right-of-way shall remain in full force and effect unless the holder thereof notifies the Secretary or Secretary of Agriculture, as appropriate, that he elects to be governed by the provisions of this subsection, in which case such previous grant shall be deemed to have been relinquished and shall terminate upon issuance of a new right-of-way.

"(C) Any grant of right-of-way for a water system described in subparagraph (A) which is based on an Act of Congress enacted prior to October 21, 1976, shall be subject to fees to the United States, or permits or other rights-of-way authorization, only to the extent such payments or authorizations are required by the Act of Congress under which the grant is claimed. No grant issued before October 21, 1976, which is brought under this subsection shall be subject to any fees to the United States or to permits or other authorization. Each such grant shall continue in effect so long as the rele-

vant system is used solely for the purposes described in subsection (a)(1), subject to the requirement that the holder of such a grant and his successors shall comply with the requirements of paragraph (c)(2).

"(2)(A) Each grant under this subsection shall be recorded with the appropriate state office of the Bureau of Land Management or regional office of the Forest Service, according to which agency's lands are traversed, no later than January 1, 1988, and every thirty years thereafter in response to written notice by the Secretary or Secretary of Agriculture or, in the event of a transfer of such grant after January 1, 1985, no later than sixty days after the date of transfer.

"(B) Recordation required by this paragraph shall include the name and address of the holder of the grant; a description of the right-of-way, including estimated width and length, and its general location; and documentation of water right(s) held, as certified by the State granting the water right.

"(C) Rights-of-way granted under this subsection shall comply with the continued recordation requirements under this paragraph. Failure to comply with such requirements shall create a presumption of abandonment with the burden of proof on the holder to show that such failure was not intentional; except in the event that the holder of a right-of-

way does not meet the above recordation requirements, but subsequently makes a valid attempt to do so, the appropriate Federal Agency will give the holder reasonable time to complete the recordation.

"(3)(A) After January 1, 1985, all applications for new rights-of-way or any proposed modifications of an existing right-of-way granted under this subsection must be filed in accordance with paragraph (c)(2). A conditional right-of-way shall be granted to the applicant for a new right-of-way at the same time the State grants the applicant its conditional decree or permit for the water rights which would supply the right-of-way, or upon the date the Federal Government receives the application, whichever is later. No conditional right-of-way shall be granted unless the respective Federal Agency is in agreement with the proposed location and construction of such a right-of-way or modification of an existing right-of-way. A conditional right-of-way shall become perfected when the water rights become perfected under the law of the State granting them, and should the water rights ever be abandoned under the same State law, the right-of-way is abandoned as a matter of law.

"(B) A maximum annual fee of $100 may be charged by the Federal Government for rights-of-way granted after October 21, 1976. The collection of such fee by the Federal

Government shall be through means other than termination of the right-of-way.

"(4) The holder of a right-of-way granted or recorded under this subsection shall comply with the following requirements. The office of recordation must be notified within sixty days of any change of address. The holder of each right-of-way shall allow the Federal Government, State government, and the public free and unrestricted access to, upon, and across the right-of-way for all purposes not inconsistent with the exercise and enjoyment of the right-of-way, except that the holder shall not be liable for injury resulting from access, unless caused directly by the holder's negligence. The holder shall have the right to post warnings around dangerous areas, unless directed otherwise by the Forest Service or the Bureau of Land Management. All physical facilities constructed on new rights-of-way granted under this subsection, as opposed to subsection (c)(1) rights-of-way, shall be constructed, repaired, and maintained in a manner which: (A) minimizes damage caused by the physical facilities themselves to fish and wildlife habitat, and otherwise protects the environment; (B) protects lives, health, and property, including that of other lawful users of lands under the provisions of State law where the right-of-way is located; and (C) does not unreasonably obstruct or interfere with the interests of individuals living in the general area traversed by the right-of-

way who have historically relied on the fish, wildlife, or other biotic resources of the area for subsistence purposes. Any environmental studies required under the National Environmental Policy Act of 1970 as a result of this subsection shall be the responsibility of the Federal Government. Any damage caused by the failure to comply with this paragraph shall be subject to the law of the State(s) where the right-of-way is located.

"(5) Upon relinquishment, abandonment, or termination of a right-of-way granted or recorded under this subsection, the holder shall within ninety days cease to use the right-of-way and remove all structures and improvements except those owned by the United States, and shall restore the site insofar as reasonably possible, unless the appropriate Secretary or his delegate agrees in writing to wholly or partially waive such requirement. Structures or improvements not so removed within a reasonable time shall become the property of the United States. The holder of each right-of-way shall indemnify the United States against any liability for damage to life or property arising from the holder's negligent occupancy or use of the granted right-of-way. Upon relinquishment of such a right-of-way, such indemnification shall thereafter no longer be in effect. In the event the holder of the right-of-way allows it to deteriorate to the point of threatening life or property and refuses to do the necessary repair and

maintenance, the Secretary shall have the right to undertake such repair and maintenance on the right-of-way and assess the holder for the cost.

"(6) Mineral and vegetation material, including timber, within the right-of-way granted by this subsection are reserved to, and shall remain the property of the United States, but may be available for use on the right-of-way in case of emergency.

"(7) Nothing in this subsection shall be deemed to confer any power or authority to regulate or control in any manner the reservation, appropriation, use or diversion of water for the purposes described in subsection (a)(1). Nothing in this subsection shall be deemed to confer any right or claim to the acquisition or use of water, or to require the conveyance or transfer to the Federal Government of any such right or claim.".

SEC. 3. Section 505 of the Act is amended by adding at the end thereof the following new subsection:

"(c) This section shall not apply to rights-of-way granted by subsection (c) of section 501.".

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II

98TH CONGRESS
1ST SESSION

H. R. 2838

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16 (legislative day, NOVEMBER 14), 1983

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To authorize the Secretaries of the Interior and Agriculture to provide assistance to groups and organizations volunteering to plant tree seedlings on public lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that—

(1) trees improve the quality of public lands by reducing noise, filtering impurities from the air, moderating extreme weather conditions, preventing soil erosion, and providing additional habitats for wildlife;

(2) the planting of trees on public lands represents a firm commitment to a healthier, more beautiful, and more diverse environment, now and for future generations;

(3) many States traditionally celebrate "Arbor Day" on the last Friday of April each year; and

(4) States which do not currently celebrate "Arbor Day" should select and designate as "Arbor Day" an appropriate day in order to focus attention on the economic and environmental benefits of planting trees on public lands.

SEC. 2. (a) The Secretary of the Interior and the Secretary of Agriculture may provide donated or surplus tree seedlings, and technical advice and assistance with respect to the planting of such seedlings, to any public or private group or organization, including but not limited to any school group, church group, scouting group, or professional forestry organization, volunteering to plant such seedlings on land owned by State or local governments or the Federal Government. The seedlings may be provided only to those groups or organizations whose planting plans submitted under subsection (b)(1) have been approved by the appropriate Secretary.

(b)(1) Any group or organization planning to plant tree seedlings under this Act shall notify the appropriate Secretary of such plans. Such notice shall be accompanied by a

statement of (A) the quantity of such seedlings, and the type of technical advice and assistance with respect to the planting of such seedlings, desired by such group or organization; and (B) the proposed site of such planting, together with evidence that such group or organization has received the permission of the local, State, or Federal officer who exercises control over the land at such site to proceed with planting under this Act.

(2) Any person who provides voluntary planting services under this Act (A) may not be compensated by the Federal Government for such services; and (B) shall not be considered, by reason of having provided such services, a Federal employee for any purpose.

(c) Each Federal department or agency shall cooperate with the Secretaries in the donation of surplus tree seedlings for planting under the provisons of this Act. The Secretaries may accept any donation of any tree seedling by any Federal department or agency or any person for planting under the provisons of this Act.

(d) The Secretaries shall take such action as they determine to be appropriate to publicize the availability of tree seedlings, and technical advice and assistance with respect to the planting of such seedlings, under this Act.

SEC. 3. Notwithstanding any other provision of law, the Secretary of Agriculture is directed to waive annually with-

out charge all or a portion of payment of rental fees required under terms of a permit for use of certain lands of the national forest system as organization camps by local units of the Boy Scouts of America or such other nonprofit organization when such local units of the Boy Scouts of America or such other nonprofit organization are willing to perform services, as the Secretary prescribes and determines will yield a valuable benefit to the public and to the program of the Secretary on such lands. If the Secretary determines that a local unit of the Boy Scouts of America or such other nonprofit organization has not fully performed such services, such organization shall not be entitled in the subsequent year to a waiver under the provisions of this section.

SEC. 4. For purposes of this Act—

(a) the term "surplus tree seedling" means any tree seedling owned by or under the control of the Department of the Interior or the Department of Agriculture that the respective Secretary determines (1) is not required for use in any program administered by such department; or (2) does not possess the characteristics required for use in any such program; and

(b) the term "other nonprofit organization" shall mean (1) a nonprofit organization holding an exemption under section 501(c) of the Internal Revenue Code, as amended; and (2) a nonprofit association or nonprofit

corporation, which is not controlled or owned by profit-making corporations or business enterprises, and which is engaged in public or semipublic activity to further public health, safety, or welfare.

Passed the House of Representatives November 16, 1983.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

STATEMENT OF SENATOR WILLIAM L. ARMSTRONG
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
JUNE 28, 1984

MR. CHAIRMAN: I am very grateful to you and the members of the Subcommittee for scheduling an early hearing and for this opportunity to speak on behalf of S. 2692, "a bill to exempt water conveyance systems from fees and conditions under the Federal Land Policy and Management Act of 1976."

I introduced this bill on May 21, 1984, to amend the Federal Land Policy and Management Act of 1976 (FLPMA), to clear up title problems which have arisen over water rights-of-way crossing federal lands and to provide for future issuance of water rights-of-way on federal lands. Currently FLPMA requires that water rights-of-way (defined in FLPMA sec. 501(a)(1)) must be permitted and treated like any other right-of-way on the federal domain, and western water experts have advised me that these permits create a serious cloud on all water rights involved, eroding one of our most basic property rights. Simply put, such permits, and their accompanying limitations, are contrary to the concept of the supremacy of state water law.

As background, under various laws since 1866, water rights-of-way have been granted for diversion ditches crossing the federal lands. Under the first federal law on the subject in 1866, the only thing required to receive the right-of-way was to simply build the ditch--no documentation whatever was required. Under an 1891 law only ditches that were longer than 10 miles had to be recorded by filing a map or plat with the Federal Government. As expected, a great number of ditches were under 10 miles and therefore not required to file. Under the later laws, rights-of-ways were granted and a small fee charged, that has since kept growing--to the concern of many

right-of-way holders. Since these early diversions had no recorded documentation, the Forest Service and the Bureau of Land Management now consider these holders in trespass and attempted last year to convert these earlier rights-of-way into FLPMA permits, charging fees and threatening termination of the right-of-way for those who refused to comply. In addition, the Agencies have informed right-of-way holders that their ditch right-of-way cannot be transfered with the state granted water right and that any new owner of the property and water right will be required to get a new permit from the Government.

These actions by the Forest Service and the Bureau of Land Management in implementing FLPMA are grossly unfair and infringe on legitimate rights of people who have complied with earlier laws in the development of farms and ranches in the Rocky Mountain west -- particularly since many of these irrigation ditches were constructed and in operation long before the creation of the National Forests. Moreover, this inequity does not simply impact ranchers and farmers. Municipalities, at least in Colorado, have run into the same problem with ditch rights-of-way that were acquired years ago.

Last year legislation passed the House (H.R. 2982), addressing a part of this issue. However, the House passed bill only provides limited relief for a certain category of ditches in existence before the enactment of FLPMA in 1976. The bill I am introducing today would amend FLPMA to exempt all water conveyance systems, old and new, from the present permitting requirements of the Act, replacing it with a recordation authority for pre-FLPMA grants and new provisions for issuance of new rights-of-way.

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In pursuit of this legislation, I asked Secretary Block of the Department of Agriculture to place a moratorium on converting pre-FLPMA rights-of-way into FLPMA permits. He graciously agreed to do so at least until the end of this congressional session.

I ask that my colleagues take a close look at this legislation and urge that Senate action be taken on this measure as soon as possible. To assist you in your consideration, I have attached a section-by-section analysis to my statement and ask that it be included in the hearing record.

In addition, I would like to make a few technical points about the legislation. First, I want to make it clear that my concern is that the intent of the legislation be carried out, and therefore, I ask the Committee to assist with their expertise in amending the measure in any way to clear up any possible ambiguity. In fact some concern has been raised that the legislation would not allow ranchers and farmers who cannot prove they have a valid 1866 or 1891 Act right-of-way to record their ditches under the Act to protect their longstanding interests. The bill, however, is intended to address that particular problem, and I ask that section (c)(1)(B) of the bill be amended to read:

> "Grants of rights-of-way for water conveyance systems made by this subsection are supplementary to, and not in lieu of, any other rights-of-way constructed under the authority of previous acts or rights-of-way acquired by prescription or otherwise prior to October 21, 1976. Each such previous grant or other acquisition of right-of-way, not-withstanding any acceptance of permits, failure to record, or lack of proof of prior grant, shall remain in full force and effect unless the holder thereof notifies the Secretary or Secretary of Agriculture, as appropriate, that he elects in writing to be governed by the provisions of this subsection, in which case such previous grant or other acquisition shall be deemed to have been relinquished and shall terminate upon issuance of a new recorded right-of-way.

In addition there has been some concern raised over the provision in Section 4 that all physical facilities that are constructed on new rights-of-way must be constructed, repaired, and maintained to comply with 3 specific requirements--(A) to minimize damage to fish and wildlife habitat; (B) to protect lives, health, and property of other lawful users, and (C) so as to not unreasonably obstruct or interfere with any historical subsistence interests of people living in the general area traversed by the right-of-way. The legislation clearly makes this applicable to new ditches issued under this bill, and not to ditches that are recorded under the bill or to modifications on ditches that are recorded under this bill.

Moreover, I want it very clear for the record that this provision in Section 4 does not extend any rights to the Federal Government to dictate minimum stream flow on any ditch or water conveyance system because of this provision. It is the intention of Section 7 of the bill to clearly prohibit any such interpretation of this legislation. However, if that is not clear, I ask the Committee make whatever language changes necessary to make it clear.

In closing, I ask that the Committee keep the hearing record open for a period of time, since several parties have indicated an interest in submitting a statement for the Committee's record. I also ask that the Committee include in the record the attached letter to me from Mr. Roger E. Krempel, the Director of Public Works and Wter Utilities for the City of Fort Collins, Colorado.

Section by Section Analysis
Armstrong Water Rights-of-way Bill

Section 1 of the bill defines the term "the Act" as the Federal Land Policy and Management Act of 1976 (FLPMA).

Section 2 of the bill amends section 501 of FLPMA by the addition of a new subsection (c). The new subsection authorizes the recordation of all existing rights-of-way and provides for the creation and recordation of all new rights-of-way which are described in section 501(a)(1) of FLPMA as rights-of-way crossing public lands or National Forest Service lands which are used for "reserviors, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water".

Paragraph (c)(1)(A) of the bill addresses section 501(a)(1) rights-of-way constructed prior to January 1, 1985 and in use or placed in use after the enactment of FLPMA, October 21, 1976--including rights-of-way that have encountered technical difficulties relating to documentation of the original grant. Paragraph (c)(1)(B) explains that previous rights-of-way change only if the holder elects to record the grant under the new subsection. If the holder records under the new subsection, the previous grant is relinquished upon issuance of the new right-of-way. For rights-of-way that do not record under the new subsection, paragraph (c)(1)(C) restricts the government's right to charge fees or require permits to the law under which the original right-of-way was issued. For rights-of-way issued before October 21, 1976 that are recorded under the new subsection, paragraph (c)(1)(C) prohibits the charging of any fee and no permit can be required. Any grant brought under the new subsection will remain in effect so long as it is used for the purposes described in (a)(1) and the holder records the grant under paragraph (c)(2).

Paragraph (c)(2)(A) provides for recordation of (a)(1) rights-of-way with the Bureau of Land Management or National Forest Service office that is responsible at the field level for supervision. For rights-of-way granted before January 1, 1985, the election to record under the new subsection must be exercised by January 1, 1988, and every 30 years thereafter--after written notice from the Federal Government. Also, after January 1, 1985, a new holder of a subsection (c) right-of-way must record the transfer within 60 days of its occurance.

Paragraph (c)(2)(B) details the recordation requirement, leaving nothing to the discretion of the Federal Government. To record, the holder must file (1) name and address, (2) description of the right of way, including estimated width and length and general location, and (3) documentation of the accompanying water right.

Paragraph (c)(2)(C) provides that rights-of-way recorded or granted under the new subsection must re-record every 30 years upon notice sent by the Federal Government, and the failure to file will create a presumption of abandonment. However, the right-of-way holder will not lose his grant if he can show his failure to record was not intentional. Also the paragraph provides that the Federal Government will give the holder an opportunity to

perfect the recordation, in the event that the details of the requirements in paragraph (c)(2)(B) are not met and the holder made a valid attempt to meet them.

Paragraph (c)(3)(A) pertains to new rights-of-way granted under the subsection after January 1, 1985 and to modification of rights-of-way that are controlled by this subsection. It requires that both must be recorded under subsection (c)(2). For new subsection (c) rights-of-way, the grant will be tied to the water right. If the water right is conditional, the right-of-way is conditional. When the water right is perfected, ie. put to beneficial use, the right-of-way becomes perfected. Should the water rights ever be abandoned the right-of-way is automatically abandoned.

Paragraph (c)(3)(B) provides that for post-FLPMA (a)(1) rights-of-way the Federal Government has the discretion to charge no more than $100 per right-of-way annually, but that the right-of-way cannot be terminated to collect the fee. The Federal Government, however, is authorized to collect the fee through any other means available to it.

Paragraph (c)(4) provides the list of requirements that a holder under the ne w subsection will be required to meet. The office of recordation must be notified within 60 days of any change of address and the holder must assure the Federal Government, State Government, and the public free access to the right-of-way, to the extent that such access is not inconsistent with the holder's exercise and enjoyment of the right-of-way. However, the holder shall not be liable for any injury resulting from access, unless it is caused directly by the holder's negligence. The holder also is given authority to post the land to warn of dangers, unless otherwise instructed by the Forest Service or the Bureau of Land Management. In addition, paragraph (c)(4) provides that all facilities constructed on new rights-of-way (as distinguished from recorded rights-of-way) granted under this subsection must be constructed, repaired, and maintained to:

i. minimize damage to fish and wildlife habitat;
ii. protect lives, health and property; and
iii. not unreasonable obstruct or interfere with the interests of people living in the area traversed by the right-of-way who have subsistence rights in the area.

The paragraph also requires that all environmental studies required by NEPA are the responsibility of the Federal Government and that any damage caused by the failure of the holder to comply with this paragraph will be subject to the law of the State(s) where the right-of-way is located.

Paragraph (c)(5) requires that upon termination of a subsection (c) right-of-way, the holder must stop using it and must reasonably restore the site--unless otherwise agreed to by the Federal Government. Structures not removed within 90 days become the property of the Government, and the holder shall indemnify the Government against any liability for damage to life or property arising from negligent occupancy of the right-of-way. If the holder allows the right-of-way to deteriorate where it threatens life or property and refuses to do the necessary repair or maintenance, the Government has the authority to do the work at the expense of the holder.

Paragraph (c)(6) reserves to the Federal Government mineral and vegetation, including timber, within the right-of-way, except in case of emergency.

Paragraph (c)(7) insures that nothing in the new subsection creates or presumes the existence of any Federal water rights.

Section 3 amends 505 of FLPMA by prohibiting its application to subsection (a)(1) rights-of-way that are granted or recorded under new subsection (c). The majority of Section 505 requirements are already incorporated into the new subsection 501(c).

STATEMENT OF SENATOR JOHNSTON

Mr. Chairman, let me begin by expressing my appreciation to you for scheduling a hearing on H.R. 2889 in such a timely fashion. I think it is important that this legislation be enacted before the end of this Congress, and the Subcommittee's hearing today will certainly help in that regard.

The bill before us today, H.R. 2889, would amend the National Historic Preservation Act to provide financial and other assistance for the National Building Museum and the National Learning Center (better known as the Capital Children's Museum) and would reauthorize funding for the Advisory Council on Historic Preservation.

More specifically, H.R. 2889 authorizes the Secretary of the Interior to provide grants to the Board of Directors of the National Building Museum of not more than $1.5 million annually for FY 1985-1988. These funds will be used to provide seed money for the start-up costs for the Museum's programs while the Pension Building (where the Museum is located) is being renovated and prepared for Museum use. The measure also requires the submission of a report to

Congress regarding the long-term management, staffing, and funding of the Museum.

Section 2 of H.R. 2889 extends the authorization for the Advisory Council on Historic Preservation. Under current law, this authorization will expire at the end of this fiscal year. The legislation before us today would extend this authorization through fiscal 1989 at the same annual funding level as presently authorized ($2.5 million). It is imperative that this authorization be extended so that the valuable work of the Council can continue.

The final provision in the House-passed bill relates to the National Learning Center, known here in Washington as the Capital Children's Museum. The legislation recognizes, quite correctly I believe, the outstanding work of the Children's Museum and authorizes grants of up to $500,000 per year for 4 years for the maintenance and security of the buildings, grounds, and contents of the Center. In addition, H.R. 2889 directs that a comprehensive management plan for the Center be prepared in consultation with the Secretary of the Interior, the Secretary of Education, the General Services Administration, and the Smithsonian Institution so that the long-range as well as the short-term needs of the Center can be adequately addressed.

Mr. Chairman, I believe that each of these provisions is worthy of our support, and I plan to do what I can to help ensure the enactment of this legislation in the very near future.

STATEMENT OF DOUGLAS W. MacCLEERY, DEPUTY ASSISTANT SECRETARY, DEPARTMENT OF AGRICULTURE

Mr. MACCLEERY. Thank you, Mr. Chairman. Would you like me to comment on the bills in order or all at once?

Senator WALLOP. I think just, if we can get each of your testimony on all of the bills, we will just go right on with all of the bills that you are commenting on.

Mr. MACCLEERY. The Department of Agriculture has no position on H.R. 2889. We would like to testify, though, on H.R. 2838, S. 2692 and H.R. 2982.

First, I will discuss H.R. 2838, having to do with voluntary tree planting on the National Forest System lands, and, if you don't mind, I will brief my statement.

Senator WALLOP. Fine.

Mr. MACCLEERY. We have no objection to the enactment of H.R. 2838 if section 3 which would waive all or a portion of the annual fee charged certain holders of permits to use National Forest Systems lands as organization camps, is deleted.

The administration has actively encouraged the voluntary participation of citizens in the activities of the Federal Government. We believe that section 2 has a similar and compatible objective and would complement our ongoing volunteer program. The program would aid in accomplishing valuable reforestation on public lands. It would serve to focus the public's attention on the importance and renewability of the Nation's forest resources.

We would expect to carry out the authority provided by H.R. 2838 in a manner similar to our existing volunteer program so that it would not displace work now being done by contractors or employees working under our ongoing reforestation programs. We would use it to plant additional acres that we are not able to finance from other appropriations. These additional acres would be in areas of high public visibility and public use areas of limited size where commercial planting operations are restricted.

Section 3 of the bill would exempt the fees we charge holders of permits for organization camps on National Forest Systems lands if these permittees are nonprofit and volunteer to perform services on the National Forests which provide a valuable benefit to the public and to the programs of the Forest Service. About 105 of these camps are permitted to youth groups, such as the Boy Scouts; 95 are permitted to churches; and the remainder to a variety of public and private organizations serving a wide range of recreational activity.

For most types of National Forest uses, annual fees are commonly set at 5 percent of the appraised fair market value of Federal lands. However, in accordance with existing authority, organization camps which would be covered by this legislation are provided a discount from that amount, depending on the types of socially beneficial programs involved.

Section 3 was added to H.R. 2838 without an opportunity for us to comment. As I indicated above, the authority is currently available to waive all or part of an organization camp's fees. This authority, in regulations, sets forth six circumstances under which a portion of the fee may be waived. My written testimony discusses

the details of the fee waivers available to organizations covered by this legislation. The Boy Scouts currently qualify for a 60 percent discount in fees under the current system.

We do not believe it is appropriate to impose a new system of waiving fees for certain organizations, at an estimated cost of around $500,000 annually on top of the system now in use, and thus we would oppose inclusion of this section, section 3, in H.R. 2838.

That concludes my testimony on that legislation. I would now like to testify on S. 2692 and H.R. 2982, similar bills which would exempt holders of grants for water conveyances or irrigation systems on National Forest lands and public lands from payment of fees and the environmental and other standards required under section 501 of the Federal Land Policy and Management Act—FLPMA.

We believe that these bills have been prompted over the the concerns of some water conveyance permittees about the implementation through regulation by the Departments of Agriculture and Interior of title 5 of FLPMA. These concerns focus on the apparent increase in the authority granted the Federal Government to charge annual fees, to establish a definite term for the permit, and to modify the conditions of existing permits at the time of renewal. Note that I said an apparent increase. It should be understood that even prior to FLPMA the Federal Government also had the authority to regulate all the foregoing requirements. The difference is that all the terms and provisions were not explicitly spelled out in the pre-FLPMA permits as contrasted with permits issued since the passage of FLPMA.

We presently administer almost 4,000 special use permits for water conveyance facilities, nearly all of which apply to rights-of way in place before the enactment of FLPMA. The permits involve about 6,000 miles of ditches, pipes, and canals. Annual fees received in 1983 were $225,000.

I would like to discuss individually the concerns raised by the permittees, and in the process of discussing these concerns I will explain how the Department plans to positively address the concerns that appear to be the basis for this legislation. Hopefully, in doing so, I can persuade the subcommittee members that passage of this legislation is not necessary.

First, let me discuss the concern of the required payment of an annual fee. Authority to charge a fee for permits for the use of Federal lands predates FLPMA, but the policy of charging was reinforced by that act. The act requires the holder of a right-of-way to pay annually in advance the fair market value of the right-of-way. The average annual fee for permits for water conveyances is $60.75. However, about 75 percent of permit holders pay a minimum charge of only $25 annually, or pay no permit fees at all. Where a small charge is involved, charging an annual fee as is required by FLPMA produces an administrative burden.

Concern has been expressed not so much over the amount of the fee as over the possibility of future fee increases. Permit holders are concerned that fees may be raised in the future, perhaps even to an extent that use of the permit may be jeopardized by an increase in the fee.

One viable alternative to the current situation would be to charge a one-time fee that would run for the life of the permit such as is common practice in the private sector for charging rights-of-way easements. We would welcome working with the subcommittee to explore ways to provide flexibility to charge a one-time or periodic fee.

A second concern was over the length of the authorization. Section 504(b) of FLPMA provides that each right-of-way or permit shall be limited to a reasonable term in light of all circumstances concering the project. In determining the duration of the right-of-way, the Secretary shall consider, among other things, the cost of the facility, its useful life, and any public purposes it serves.

In the past we have issued annually renewable permits. FLPMA authorizes the issuance of long-term permits or easements. We would plan to utilize this authority to the full extent authorized by the act. We would be willing to issue long-term easements on these water conveyances to provide a certainty that their use will continue into the future. As I mentioned, in the past they have been covered by renewable, annual permits running for in many cases a 10-year period.

Providing long-term easements would address some of the significant concerns that people have.

The third area of concern was the potential for new conditions to be added at the time of permit renewal. This stems from the concern that the Federal Government would add conditions whose effect might be to diminish or eliminate water rights held by the permittee.

I would like to make it perfectly clear that there is no intent to jeopardize such water rights or other rights held by the permittee at the time of permit renewal. We are considering changes in our regulations or the development of standard clauses for water conveyance permits which would make it clear that no condition will be added at the time of renewal which would have the effect of diminishing water rights. We would be glad to work with the subcommittee in development of such changes.

The fourth area of concern is over transferability. The fact that many of our existing permits contain a clause which prohibits transfer of a special use is also of concern to the permittees.

While permits have not been transferable, must have been reissued under new ownership. It is our intent to revise our permits to conform with current regulation language. That language allows for a clause in the permit which would specify that the permit can be transferred as long as a new owner agrees to be bound by the terms and the conditions of the original permit.

Another alternative would be to include in the permit the terms and conditions under which it can be transferred. This should relieve a major concern that the permittees have had.

Another concern is over pre-existing rights. Recently claims have been made that we are requiring permits in situations where a valid existing right already exists. We will continue to review each claim on a case-by-case basis. If evidence of these rights is established, we will issue appropriate easements under existing authority. The owner of a right must, however, be willing to incur costs of surveying as necessary to describe the area involved.

To summarize, we are prepared to issue long-term easements to protect in regulations and easement clauses, the existing water rights of permittees, and to provide for transferability of the permit if permittees wish to sell it.

I have reviewed the testimony of outside witnesses who are supporting this legislation, and I think this responds to their primary concerns, and would urge that before passage of this legislation we attempt to work it out administratively.

Recently, the Forest Service and the Bureau of Land Management requested, through the Federal Register, public involvement on possible changes in the methods now used to establish fees and the terms and conditions utilized in linear rights-of-way. We expect this public involvement to be helpful in resolving many of the concerns discussed here today.

We have a number of significant concerns with these two bills if they were to be passed. The bills fail to recognize that there are many existing situations involving water conveyances for which there is no current legal authorization. These situations would be legalized by this bill.

A review of current earlier authorities is necessary to understand how these situations arose, and my prepared statement discusses the background of these situations.

The Forest Service has managed new water uses through issuing special use permits. The initial policy was to waive fee requirements on the basis that the public derived the benefit from the water system. It is important to recognize that the authority to charge for permits is derived from authorities to regulate rights-of-way that existed in statute since 1897.

The grants that would be made under this legislation would lack the flexibility that would be necessary to maintain permit conditions which are consistent with changing business, legal and market conditions.

The bill does not recognize the fact that there is considerable variation throughout the United States in State laws affecting water uses. While the Western States do control the issuance of water rights, this is not the case in the East. Eastern States rely on the principles of riparian water rights under which the riparian owner is entitled to a reasonable use and amount of water. A right as such is not usually issued. In the case of eastern National Forest System land, the riparian rights are held by the Government. The bill could operate to interfere with the riparian system by granting an automatic riparian status to an otherwise nonriparian right-of-way applicant, possibly to the detriment of riparian National Forest water uses or other downstream riparian owner. Additionally, the conditional water rights referenced in S. 2692 are not used in all Western States.

We believe that the bill would also result in considerably weakened standards for construction and maintenance of water conveyance facilities as compared to those which are provided for in section 505 of FLPMA. That authority provides for compliance with Federal standards, or State standards if those are more stringent than Federal standards, regarding health and safety, environmental protection, siting, construction, operation, and maintenance of facilities. This proposed relaxation of the standards is significant

since the establishment of reservoirs and other facilities which are not properly constructed or maintained could result in life or major property damage.

In conclusion, we believe that these bills go considerably beyond what is necessary to address the legitimate concerns of holders of water conveyance permits. We feel that the majority of holders of water conveyance system rights-of-way support the requirements of FLPMA. Many water users have accepted the new permits and are now paying fees.

We are, as I had mentioned previously, committed to addressing administratively the primary concerns of the holders of water conveyance permits that led to the introduction of these bills. These are fees, term length, renewability, transferability, and preexisting rights.

We would welcome the involvement of this subcommittee in that consideration. We feel strongly that the legislation is not necessary to make requirements regarding permits and fees fair and equitable. While assuring the holder the use of the National Forest System land, provision should be made to protect the land and resources of these Federal areas in the interest of the public.

This legislation would replace the system of granting rights-of-way that has worked well over the last 90 years and has appropriately evolved to reflect current needs and Federal land management policy, with one which would give undeserved benefits to a select few individuals at considerable expense to the public in terms of both dollars and cost of control over management of natural resources.

We are, therefore, strongly opposed to both bills. We want to make clear, however, that we would like to work with the subcommittee and the permittees to develop a permitting system which is fair and equitable to all parties.

That concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. MacCleery follows:]

STATEMENT OF
DOUGLAS W. MACCLEERY
DEPUTY ASSISTANT SECRETARY, U.S. DEPARTMENT OF AGRICULTURE

Before The

Subcommittee on Public Lands and Reserved Waters,
Committee on Energy and Natural Resources
United States Senate

Concerning H.R. 2838 and S. 2692/H.R. 2982

June 28, 1984

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

We appreciate the opportunity to join with the Subcommittee in its deliberations on three bills which directly affect the lands of the National Forest System. H.R. 2838 would authorize the Secretaries of Agriculture and of the Interior to provide donated or surplus tree seedlings and assistance in their planting to those public and private organizations volunteering to plant them on Federal, State or local government lands. S. 2692 and H.R. 2982 are similar bills which would exempt holders of grants for water conveyance systems from fees and conditions required under the Federal Land Policy and Management Act (FLPMA). I would like to discuss these bills separately.

H.R. 2838--Volunteer Tree Planting On National Forest System Lands.

We would have no objection to the enactment of H.R. 2838 if section 3, which would waive all or a portion of the annual fee charged certain holders of permits to use National Forest System lands as organization camps, is deleted.

The Administration has actively encouraged the voluntary participation of citizens in the activities of the Federal Government. We believe that section 2 of H.R. 2838 has a similar and compatible objective and would complement our

ongoing volunteers program. The program would aid in accomplishing valuable reforestation on public lands. Further, it would serve to focus the public's attention on the importance and the renewability of the Nation's forest resources.

The bill's provisions are, to some extent, already authorized by law. The Volunteers in the National Forests Act of 1972 authorizes the Secretary of Agriculture to accept the services of individuals as volunteers. Section 9 of the Granger-Thye Act authorizes the Secretary to sell surplus tree seedlings to State and local governments at cost. Under this authority State and local governments provide these seedlings to organizations and landowners. The Federal Property and Administrative Services Act of 1949 authorizes the disposal of surplus seedlings through an advertisement and bid procedure.

We would expect to carry out the authority provided by H.R. 2838 in a manner similar to our existing volunteer program so that it would not displace work now being done by contractors or employees working under our ongoing reforestation programs. We would use it to plant additional acres that we are not able to finance from other appropriations. These additional acres would be in areas of high public visibility and in public use areas of limited size where commercial planting opportunities are restricted.

The authority in section 2 of H.R. 2838 provides for supplying seedlings at no cost for use in volunteer programs. The cost to the Federal Government of making surplus seedlings available at no cost and providing assistance in their planting, which we estimate to be about $325,000 annually based on a program of 500,000 donated seedlings, will require us to use discretion in encouraging volunteers to plant trees. Surplus seedlings, which result from the normal operation of a tree seedling nursery, are usually used by the Forest Service

as a mulch in the nursery beds. To remove these seedlings and package them for volunteers would cost about $40 per thousand seedlings donated. An additional $25 per thousand seedlings would be incurred in providing supervision and technical assistance to volunteer organizations.

Section 3 of the bill would exempt the fees we charge holders of permits for organization camps on National Forest System lands, if these permittees are nonprofit organizations and volunteer to perform services on the National Forests that provide a valuable benefit to the public and to the programs of the Forest Service. To qualify for a waiver of fees, a nonprofit organization must either hold an exemption under section 501(c) of the Internal Revenue Code, which lists the types of organizations exempt from income taxation; or be engaged in public or semipublic activity to further public health, safety, or welfare and not be controlled by profit-making corporations or business enterprises. There are 500 organizational camps on National Forest System lands. About 105 of these camps are permitted to youth groups, such as the Boy Scouts; 95 are permitted to churches; and the remainder to a variety of public and private organizations serving a wide range of recreational activities. For most types of National Forest uses, annual fees are commonly set at 5 percent of the appraised fair market value of the Federal land being used. However, in accordance with existing authority, organization camps are provided a discount from that amount depending on the types of socially beneficial programs offered. Annual fees collected from these 500 permittees in Fiscal Year 1983 was $170,388, an average of $342 for each permit.

Section 3 was added to H.R. 2838 without an opportunity for us to comment on its appropriateness. As I indicated above, authority is currently available to waive all or part of organization camp fees. This authority, found in 36 CFR 251.57(b)(3), sets forth six circumstances under which a portion of the

fee can be waived. One such circumstance is when the holder of an organizational camp permit is a nonprofit association or nonprofit corporation which is not controlled or owned by a profit-making corporation or business enterprise, and which is engaged in public or semipublic activity to further public health, safety, or welfare and which provides without charge, or at a reduced charge, a valuable benefit to the public or to the programs of the Secretary. We have established a priority system under this authority to discount organization camp fees where the permittee provides programs of social value. An organizational camp serving disadvantaged, underprivileged, or handicapped children is priority one and would pay the minimum annual fee of $25. Priority two permit holders receive a 60 percent discount of fees and include camps providing youth programs of a social, citizenship, character-building, or religious nature, such as the Boy and Girl Scouts, YMCA, 4-H Clubs, and churches. Camps providing organized or supervised activities and designed for family-type use, such as those sponsored by community recreation departments, sportsman clubs and fraternal organizations are the third priority and receive a 20 percent discount. We do not believe it is appropriate to impose a new system of waiving fees for certain organizations, at a estimated cost of $500,000 annually, on top of the system now in use and, thus, we must oppose the inclusion of section 3 in H.R. 2838.

S. 2692/H.R. 2982--Exempting Water Conveyance Systems From Fees Under FLPMA.

S. 2692 and H.R. 2982 are similar bills which would exempt holders of grants for water conveyance, or irrigation, systems on National Forest System and public lands from payment of fees and the environmental and other standards required under section 501 of FLPMA. This section authorizes the Secretaries of Agriculture and of the Interior to grant, issue, or renew rights-of-way for several purposes, including the impoundment, storage, transportation or

distribution of water. The bills would amend FLPMA to provide separate provisions and waivers applicable only to water conveyance systems. We strongly recommend that the bills not be enacted.

The amendment would grant rights-of-way for water conveyance systems which were constructed prior to October 21, 1976 and in use by January 1, 1985 (or October 21, 1976 in the case of H.R. 2982). These grants would be supplementary to and not in lieu of any other grants made under earlier statutes. Prior grants for water conveyance systems would remain operative unless the grantee elects to be covered under the provisions of the bills, in which case the previous grant would terminate. Although special use permits would be subject to fees, no grant made prior to October 21, 1976, would be subject to fees, permits or other authorizations by the two Departments. S. 2692 also provides for grants for new water conveyance systems, or for modifications of existing grants, but requires that the grant be conditional upon the applicant's receiving a conditional decree or permit for a water right to supply the right-of-way. The conditional grant would become perfected when the water right is perfected. The maximum fee that could be charged for these new or modified grants would be $100.

S. 2692 does not provide for termination, suspension or abatement by the Secretaries of the use of the right-of-way for abandonment of the grant or noncompliance with the provisions governing it, nor does it require the grant to be in compliance with applicable Federal or State public health and safety, air and water quality, or environmental protections standards. We assume that this lack of identification to applicable safeguards would not preclude the application of other Federal statutes, such as those relating to dam safety.

We believe that these bills have been prompted over the concerns by some water conveyance permittees about the implementation, through regulations, by the two Departments of Title 5 of FLPMA. These concerns focus on the apparent increase in the authority granted the Federal Government to charge annual fees, to establish a definite term for the permit, and to modify the conditions of existing permits at the time of renewal. Note that I said an apparent increase. It should be understood that prior to FLPMA the Federal Government also had the authority to regulate all the foregoing requirements. The difference is that all the terms and provisions were not explicitly spelled out in the pre-FLPMA permits as contrasted with FLPMA permits.

We presently administer 3,704 special use permits for water conveyance facilities, nearly all of which apply to rights-of-way in place before the enactment of FLPMA. The permits involve 5,900 miles of ditches, pipes and canals. Annual fees received in 1983 from these permits were $225,000.

I would like to discuss individually the several concerns raised by the permittees:

1. Required Payment Of An Annual Fee. Authority to charge a fee for permits for the use of Federal lands pre-dates FLPMA, but the policy of charging was reinforced by that Act. Section 504(g) of FLPMA provides that "the holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way." For most permit holders the permit fee is small. The average fee for permits for water conveyances is $60.75 per year. However, about 75 percent of permit holders pay a minimum charge of only $25 annually, or pay no permit fees at all. Where a small charge is involved, charging a fee on an annual basis as is

required by FLPMA, produces an administrative burden. It also raises concerns by permit holders that future fees may be raised, perhaps even to an extent that use of the permit may be jeopardized by the fee. One viable alternative to the current situation would be to charge a one time fee which would run for the life of the permit--such as is common practice in the private sector for charging for rights-of-way easements. We would welcome working with the Subcommittee to explore ways to provide flexibility to charge a one time or periodic fee.

2. Length Of Term Of The Authorization. Section 504(b) of FLPMA provides that "each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of the right-of-way the Secretary's concern shall, among other things, take into consideration the cost of the facility, its useful life, and any public purposes it serves." In the past, we have issued annually renewable permits. FLPMA authorizes issuance of long-term permits or easements. We plan to utilize that authority to the full extent provided by that Act.

3. Potential For New Conditions To Be Added At Time Of Permit Renewal. This stems from the concern that the Federal Government could add conditions whose affect might be to diminish or eliminate water rights held by the permittee. I want to make it clear that there is no intention to jeopardize such water rights or other rights held by the permittee at the time of permit renewal. We are considering changes in our regulations or the development of standard clauses for water conveyance permits which would make it clear that no conditions will be added at the time of renewal which would have such an effect. We will be glad to work with the Subcommittee on the development of such changes.

4. Transferability. The fact that many of our existing permits contain a clause which prohibits transfer of the special use is also of concern to many

permittees. While permits have not been transferable, they have been reissued. It is our intent to revise our permits to conform with language in 36 CFR 251.59. The permit or easement will normally be transferred if the new owner agrees to be bound by the terms and conditions of the original permit. We plan to include in the permit terms the conditions under which it will be transferred.

5. Pre-existing Rights. Recently, claims have been made that we are requiring permits in situations where a valid right already exists. We will continue to review each claim on a case-by-case basis. If recordable evidence of these rights is requested, we will issue appropriate easements under existing authorities. The owner of the right must, however, be willing to incur the costs of survey necessary to describe the area included.

Recently, the Forest Service and the Bureau of Land Management requested, through notices in the Federal Register, public involvement and comment on possible changes in the methods now used to establish fees and the terms and conditions utilized in linear right-of-way authorizations. We expect this public involvement to be quite helpful in resolving many of the concerns discussed here today.

I would like now to discuss the concerns of the Department of Agriculture with S. 2692 and H.R. 2982.

These bills, by proposing to make grants for water conveyance systems in place prior to January 1, 1985 or October 21, 1976, apparently seeks to resolve the status of some facilities now in place on National Forest System lands. The bills fail to recognize that there are many existing situations involving water conveyances across National Forest and public lands for which there is no legal authorization. These uses, which constitute trespass, could be legalized by the bills.

A review of the earlier authorities is necessary to understand how these situations could occur. Prior to 1891, water ditches could be constructed across the public domain without formal authorization. Once constructed, these facilities were accorded easement status by local custom. This custom was recognized in law by the Acts of July 26, 1866 and July 9, 1870, acts intended to assure the needs of homesteaders and miners for access and water. The easements thus provided for were to remain in effect as long as the use continued. There was no control or management of the location of the ditches.

As western settlement grew, increasing conflicts on use of the public domain lands occurred, and in 1891, the Irrigation and Drainage Act was passed, which, while not extinguishing rights acquired under the 1866 act, did require that a formal conveyance be issued upon compliance with the terms of the act by the Secretary of the Interior for all subsequent water conveyance facilities. In that same year, the act which authorized the establishment of the Forest Reserves (later designated the National Forests) was passed and, in 1897, Congress provided direction as to how these Reserves were to be managed. The 1897 act not only recognized and provided for the continuation of existing easements but also provided for, among several things, the authority to make such rules and regulations to regulate necessary to govern occupancy and use of the Forest Reserves.

Those uses in place prior to establishment of a National Forest, and which have been used continuously since establishment, remain in effect. Although no permit is required unless there is a need to expand or otherwise modify these previously existing uses, a free use permit has been issued in some cases simply to maintain a record of the outstanding right. When the permit includes land not previously included in the right-of-way, a charge is made for the additional area.

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Except for grants under the 1866 and 1891 Acts, the Forest Service has managed new water uses through issuing special use permits. The initial policy was to waive the fee requirement on the basis that the public derived a benefit from the water system. It is important to recognize that the authority to charge for permits is derived from the authority to regulate rights-of-way that has existed in statute since 1897. That authority was continued in FLPMA.

The fee waiver for rights-of-way was discontinued in 1971 in response to legislation and internal policy revisions that had occurred in preceding years. It was decided when implementing this policy to ease the impact on permittees by not initiating the fee until (1) a change in ownership occurred, or (2) there was a change in the use of the facilities authorized.

Fees are based on the fair market value of the rights and privileges authorized. Our preferred method of determining the fee is generally by use of rental data for similar uses from the private market. Where this is not available, the fee is established by charging a percentage of the appraised fair market value of the Federal land used. We have historically charged 5 percent of the land value as the annual fee. Special use permits generally provide for periodic review and adjustment of the annual fee to assure that the fee is appropriate to the value of the use.

The Federal Land Policy and Management Act of 1976 repealed or superseded earlier statutes, including the 1897 Act, insofar as they pertained to rights-of-way across Federal lands. However, permits issued before FLPMA were protected under grandfather provisions in the Act and are not required to be reissued as a result of enactment (section 509(a)). A new permit is issued only when a change in ownership or use occurs. This is essentially the same policy applied by the Forest Service prior to passage of FLPMA

in converting free use to charge. In fact, FLPMA requirements generally are quite similar to the policies in effect prior to 1976. The principal change is one which could benefit users. Prior to 1976, the Forest Service did not have the authority to grant long term easements. This is now available under FLPMA.

Grants that would be made under S. 2692 and H.R. 2982 would lack flexibility necessary to maintain permit conditions which are consistent with changing business, legal, and market conditions. Prohibiting the charging of fees for existing grants, and limiting annual fees for permits issued after October 21, 1976 to $100, would preclude the raising of fees to adjust for changes in market values. Furthermore, nonpayment of fees could not lead to termination of the grant. This is not sound business practice. The only recourse available to the Government would be litigation, an expensive and time-consuming action. Granting free use or setting a $100 maximum charge for water conveyance systems would encourage others holding permits on National Forest System lands, such as for electronic uses, road rights-of-way, and pipelines, which are similarly affected by the provisions of Section 504(g), to seek similar treatment. Granting free use to one group of users while denying it to others would be discriminatory and inequitable as well as opening the door for future waivers.

Further, the bill does not recognize the fact there is considerable variation throughout the United States in State laws affecting water uses. While the Western States do control the issuance of water rights, this is not the case in the East. The Eastern States rely on the principles of riparian water rights under which the riparian land owner is entitled to a reasonable use and amount of water. A right, as such, is usually not issued. In the case of eastern

National Forest System land, the riparian rights are held by the Government. The bill would apparently usurp these publicly-held rights. The bill could operate to interfere with the riparian system by granting an automatic riparian status to an otherwise nonriparian right-of-way applicant, possibly at the detriment of the riparian National Forest water uses or a downstream riparian water user. Additionally, the conditional water rights referenced in S. 2692 are not used in all Western States.

We believe that the bill would result in substantially weakened standards for construction and maintenance of water conveyance facilities as compared to those which are now provided for in Section 505 of FLPMA. That authority provides for compliance with Federal standards, or State standards if those are more stringent than Federal standards, regarding public health and safety, environmental protection, and siting, construction, operation, and maintenance of facilities. This proposed relaxation in standards is significant since the establishment of reservoirs or other facilities, which, if not properly constructed or maintained, could result in loss of life or major property damage.

In conclusion, we believe that the provisions of S. 2692 and H.R. 2962 go considerably beyond what is necessary to address the legitimate concerns of holders of water conveyance permits. We feel that the majority of holders of water conveyance systems rights-of-way throughout the West support the requirements of FLPMA. Many water users have accepted new permits and are now paying fees. As discussed in this statement, we are committed to addressing administratively the primary concerns of holders of water conveyance permits that led to introduction of these bills. These are fees, term length renewability, transferability and pre-existing rights. We would welcome the involvement of the Subcommittee in our review of these issues.

We feel strongly that legislation is not necessary to make requirements regarding permits and fees fair and equitable. While assuring the holder the use of the National Forest System land, provision should be made to protect the lands and resources of these Federal areas and the interests of the public. S. 2692 and H.R. 2982 would replace a system of granting rights-of-way that has worked well over the last 90 years and has appropriately evolved to reflect current needs and Federal land management policies, with one which would give undeserved benefits to a select few individuals at considerable expense to the public in terms of both dollars and a loss of control over managment of natural resources. We are therefore strongly opposed to both bills. We want to make clear, however, that we would like to work with the Subcommittee and the permittees to develop a permitting system that is fair and equitable to all parties.

That concludes my testimony. I would be happy to discuss our views further with the Subcommittee and answer your questions.

Senator WALLOP. Thank you. In your statement you say that the bills fail to recognize that there have been existing situations involving water conveyances across National Forest and public lands for which there is no legal authorization, and I don't quarrel with that characterization, but what they do recognize is a legitimate fear based on some behavior that users have experienced with the administrative procedures.

I welcome your desire to work with us to satisfy some of those legitimate fears, but I wonder, for example, if under the transferability regulation which you seek to propose if you have that authority free from interference from the Fish and Wildlife Service, free from interference with a number of other agencies which are beginning to cause us severe heartburn as they in the West seek to comment on every damn little thing that we do with water even though it represents no change in an existing use?

Mr. MACCLEERY. I would have to have our people review the current legislative basis for regulations.

Senator WALLOP. Let me just read your regulations and the thing which is undoubtedly of concern to all of us, the transfer fee, and it doesn't quite fit with your testimony.

It says transferee must qualify and agree to comply and be bound by the terms and conditions of the authorization. That is what you say, but then it goes on and says, ". . . and such new conditions and stipulations as existing or prospective circumstances may warrant." That isn't much of an insurance policy. That is a terrorizing thing for anybody who has dealt with this Government of ours.

Mr. MACCLEERY. I can understand that, and I sympathize with that. I will commit to reviewing our authority and reviewing this regulation and see whether it could be modified to provide more as-

surance so that when a permit is transferred, it will be subject only to the terms and conditions within which it was originally issued or any periodic review that would be authorized.

Senator WALLOP. I think that it is possible to work out most of these things, although I would have to tell you that I do not believe that we are going to be able to sit by and trust to luck in the regulatory process. I think there is going to have to be some statutory efforts made in this so we can cooperatively get it done to satisfy the genuine concerns that have been raised both by you and by those who are in support of this. We can get it done.

Mr. MACCLEERY. We agree that the concerns are valid. But we feel that the current legislation goes far beyond what is necessary to address those legitimate concerns, and we would be more than happy to work with the subcommittee.

Senator WALLOP. It is my feeling that the current regulation goes far beyond what is necessary, too. I have dealt with the Government long enough to know that they can find regulations which the rest of the mortal world couldn't begin to dream up, and whether that is, because you have plenty of time to think about it or what I don't know, but it does scare me to death.

Mr. MACCLEERY. We can certainly look at that. The regulation in other areas puts it in terms of the permit or the easement. I would like to be given the opportunity to work through before you act on the legislation.

Senator WALLOP. It is, as well Tony points out, and I experienced in my former incarnation, the unevenness, the lack of predictability about fees. It can be terribly high for one thing, and virtually nothing for another thing, though they are for all intents and purposes identical. They just happen to be either in a different forest or a different part of a given forest, but I think one of the things that we will be looking for is cooperation on predictability and reasonableness.

I can understand your testimony of the administrative burden of annual fees of $25. I believe that is probably costing you more than it is making you, but it doesn't take so much time that it doesn't give people time to dream up prospects, and so we will just work with you.

Let me ask you this. Is there a charge, fee charge for highways or a fee charge for rights-of-way of access to private inholdings?

Mr. MACCLEERY. There are fees charged for rights-of-way across private lands.

Senator WALLOP. I am not talking about across private lands. I am talking about to, across Federal lands.

Mr. MACCLEERY. In cases where the reciprocal rights-of-way, where the landowner allows access across his land in a cost share situation, such as commonly exists with checkerboard ownership, there are not, but in other situations there are fees charged for easements or rights-of-way across Federal lands.

Senator WALLOP. Well, thank you very much.

Now let me turn to my friend, Director Grier. Good morning.

STATEMENT OF MARY LOU GRIER, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Ms. GRIER. I appreciate the opportunity to testify before your committee this morning concerning H.R, 2889, the bill that passed the House of Representatives on June 4.

If I might, before I get into the testimony, I would like to mention that I found your opening comments extremely interesting, and although if we are asked officially to respond to that concept we would have to review it with the Department and OMB——

Senator WALLOP. Oh, I understand that.

Ms. GRIER. Particularly to regard with funding; however, I would like to say that it would certainly be much better than the ad hoc method that we are now operating under.

I think I could say that the ability to provide criteria and oversight as to funding needs and their use would be a great improvement.

Also, we are continually surprised by additions to the Park Service appropriations either with additional funding or being required to absorb it within available funds. Many of these additions are really not appropriate to our mission. Though I have always enjoyed appearing before your committee, Mr. Chairman, I guess if this concept were in place my appearance today would be unnecessary.

I must start at the outset on H.R. 2889 by saying that the Department is strongly opposed to the enactment of this bill, and we will recommend that President Reagan not approve the bill if it is presented to him in its present form.

H.R. 2889 authorizes grants of appropriated funds to two private nonprofit corporations located in the District of Columbia. The grants are for operating and maintenance expenses for the corporations. One such corporation, the National Building Museum, is authorized to occupy the Pension Building in the District of Columbia under the 1980 amendments to the National Historic Preservation Act. A cooperative agreement among this Department, the General Services Administration, and the Museum Corporation provides that GSA will renovate the Pension Building, Interior will provide technical assistance, and the Corporation will operate a museum in the building.

The building is federally owned and we believe of national historic significance. We believe it is appropriate to provide technical assistance and advice to the occupant in order to assure continued preservation of the building. We believe it is highly inappropriate, however, to provide Federal grants to the Corporation for its operating expenses while the building is being renovated.

It is a matter of major public concern, we believe, that the Pension Building be preserved. It is not a matter of major public concern whether the private corporation that may occupy the building continues to operate. Any responsible tenant would suffice.

The amendments proposed by H.R. 2889 would authorize grants totaling $6 million for operational expenses of the Corporation.

The U.S. Government already supports the National Building Museum in several ways. One of Washington's grandest buildings has been made available to the museum without charge. The build-

ing is being renovated by GSA without expense to the museum. Similarly, GSA bears the cost of maintenance without expense to the museum. The museum is permitted to manage the Pension Building's magnificent courtyard, to charge fees for its use, and to retain the revenue. The museum even is able to use the Federal telecommunications system.

We question what would actually be done with the money. There are few museum collections and virtually no permanently emplaced exhibits. It is not as though there will be major costs for relocation that could be directly associated with the renovation of the building.

We would point out, Mr. Chairman, that the 1980 amendments to the National Historic Preservation Act already authorize matching grants to the museum corporation of up to $500,000 per year indefinitely. No funds have been budgeted and none have been appropriated under that authorization. To add another grant provision of $1.5 million per year for 4 years as does H.R. 2889 without matching requirements is not consistent with the budgetary policy of the administration or the Congress.

We recommend instead of H.R. 2889 that the Congress repeal the unused matching grant authority enacted in 1980. S. 2605, introduced by Senator Stafford at the request of GSA and pending in the Committee on Environment and Public Works, would so provide.

H.R. 2889 authorizes grants to another private corporation, the National Learning Center. The grants are to be used for maintenance and security of the buildings, grounds, and contents of the Center.

Mr. Chairman, the buildings, grounds, and artifacts are privately owned and should be maintained with private funds. The buildings and grounds are a mix of old and new, at best only locally significant, and no historically important collections are maintained. The Center sponsors classes in learning by experience, including children's exhibits that may be touched by the pupils. Classes are given in music, art, and foreign culture. We can perceive no connection whatsoever between the National Learning Center and the purposes of the National Historic Preservation Act or any other programs of this Department.

Moreover, we understand that there is at least one similar organization, the Children's Museum of Boston, that predates the entity here in the District of Columbia. The Congress may wish to consider if this bill will be used as a precedent for requests for cash from other organizations across the country.

Finally, Mr. Chairman, the Congress has already established an Institute of Museum Services in Public Law 94-462 of October 8, 1976. The Institute, an agency within the National Foundation of Arts and Humanities, is specifically authorized to make matching grants to museums, and an authorization for this purpose of $45 million for fiscal year 1985 is already on the books. That would appear under 20 USC 967. Not only are the grant provisions in H.R. 2889 inappropriate as an Interior Department program, they duplicate authority in existing law that the Congress has placed in another Federal agency.

We strongly recommend against the approval of the foregoing provisions of H.R. 2889. The bill has one additional feature—the authorization of funds for the Advisory Council on Historic Preservation. We defer to the views of the Council, which is an independent agency, as to the enactment of this authorization.

This concludes my prepared remarks, Mr. Chairman. We will be prepared to answer any questions.

[The prepared statement of Ms. Grier follows.]

STATEMENT OF MARY LOU GRIER, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING H.R. 2889, A BILL TO AMEND THE NATIONAL HISTORIC PRESERVATION ACT.

JUNE 28, 1984

MR. CHAIRMAN, WE APPRECIATE THE OPPORTUNITY TO TESTIFY ON BEHALF OF THE ADMINISTRATION CONCERNING H.R. 2889. THIS BILL PASSED THE HOUSE OF REPRESENTATIVES ON JUNE 4.

MR. CHAIRMAN, THE DEPARTMENT IS STRONGLY OPPOSED TO THE ENACTMENT OF H.R. 2889, AND WE WILL RECOMMEND THAT PRESIDENT REAGAN NOT APPROVE THE BILL IF IT IS PRESENTED TO HIM IN ITS PRESENT FORM.

H.R. 2889 AUTHORIZES GRANTS OF APPROPRIATED FUNDS TO TWO PRIVATE NONPROFIT CORPORATIONS LOCATED IN THE DISTRICT OF COLUMBIA. THE GRANTS ARE FOR OPERATING AND MAINTENANCE EXPENSES FOR THE CORPORATIONS.

ONE CORPORATION, THE NATIONAL BUILDING MUSEUM, IS AUTHORIZED TO OCCUPY THE PENSION BUILDING IN THE DISTRICT OF COLUMBIA UNDER THE 1980 AMENDMENTS TO THE NATIONAL HISTORIC PRESERVATION ACT. A COOPERATIVE AGREEMENT AMONG THIS DEPARTMENT, THE GENERAL SERVICES ADMINISTRATION, AND THE MUSEUM CORPORATION PROVIDES THAT GSA WILL RENOVATE THE PENSION BUILDING, INTERIOR WILL PROVIDE TECHNICAL ASSISTANCE, AND THE CORPORATION WILL OPERATE A MUSEUM IN THE BUILDING. THE BUILDING IS FEDERALLY OWNED AND, WE BELIEVE, OF NATIONAL HISTORICAL SIGNIFICANCE. WE BELIEVE IT IS APPROPRIATE TO PROVIDE TECHNICAL ASSISTANCE AND ADVICE TO THE OCCUPANT IN

ORDER TO ASSURE CONTINUED PRESERVATION OF THE BUILDING. WE BELIEVE IT IS HIGHLY INAPPROPRIATE, HOWEVER, TO PROVIDE FEDERAL GRANTS TO THE CORPORATION FOR ITS OPERATING EXPENSES WHILE THE BUILDING IS BEING RENOVATED. IT IS A MATTER OF MAJOR PUBLIC CONCERN, WE BELIEVE, THAT THE PENSION BUILDING BE PRESERVED. IT IS NOT A MATTER OF MAJOR PUBLIC CONCERN WHETHER THE PRIVATE CORPORATION THAT MAY OCCUPY THE BUILDING CONTINUES TO OPERATE. ANY RESPONSIBLE TENANT WOULD SUFFICE. THE AMENDMENTS PROPOSED BY H.R. 2889 WOULD AUTHORIZE GRANTS TOTALLING $6 MILLION FOR OPERATIONAL EXPENSES OF THE CORPORATION.

THE UNITED STATES GOVERNMENT ALREADY SUPPORTS THE NATIONAL BUILDING MUSEUM IN SEVERAL WAYS. ONE OF WASHINGTON'S GRANDEST BUILDINGS HAS BEEN MADE AVAILABLE TO THE MUSEUM WITHOUT CHARGE. THE BUILDING IS BEING RENOVATED BY GSA WITHOUT EXPENSE TO THE MUSEUM. SIMILARLY, GSA BEARS THE COST OF MAINTENANCE, WITHOUT EXPENSE TO THE MUSEUM. THE MUSEUM IS PERMITTED TO MANAGE THE PENSION BUILDING'S MAGNIFICENT COURTYARD, TO CHARGE FEES FOR ITS USE, AND TO RETAIN THE REVENUE. THE MUSEUM EVEN IS ABLE TO USE THE FEDERAL TELECOMMUNICATIONS SYSTEM.

WE QUESTION WHAT WOULD ACTUALLY BE DONE WITH THE MONEY. THERE ARE FEW MUSEUM COLLECTIONS AND VIRTUALLY NO PERMANENTLY EMPLACED EXHIBITS. IT IS NOT AS THOUGH THERE WILL BE MAJOR COSTS FOR RELOCATION THAT CAN BE DIRECTLY ASSOCIATED WITH RENOVATION OF THE BUILDING.

WE WOULD POINT OUT, MR. CHAIRMAN, THAT THE 1980 AMENDMENTS TO THE NATIONAL HISTORIC PRESERVATION ACT ALREADY AUTHORIZE MATCHING GRANTS TO THE MUSEUM CORPORATION OF UP TO $500,000 PER YEAR INDEFINITELY. NO FUNDS HAVE BEEN BUDGETED AND NONE HAVE BEEN APPROPRIATED UNDER THAT AUTHORIZATION. TO ADD ANOTHER GRANT PROVISION OF $1.5 MILLION PER YEAR FOR FOUR YEARS, AS DOES H.R. 2889, WITHOUT MATCHING REQUIREMENTS, IS NOT CONSISTENT WITH THE BUDGETARY POLICY OF THE ADMINISTRATION OR THE CONGRESS. WE RECOMMEND INSTEAD OF H.R. 2889 THAT THE CONGRESS REPEAL THE UNUSED MATCHING GRANT AUTHORITY ENACTED IN 1980. S. 2605, INTRODUCED BY SENATOR STAFFORD AT THE REQUEST OF GSA, AND PENDING IN THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, WOULD SO PROVIDE.

H.R. 2889 AUTHORIZES GRANTS TO ANOTHER PRIVATE CORPORATION, THE NATIONAL LEARNING CENTER. THE GRANTS ARE TO BE FOR MAINTENANCE AND SECURITY OF THE BUILDINGS, GROUNDS, AND CONTENTS OF THE CENTER. MR. CHAIRMAN, THE BUILDINGS, GROUNDS, AND ARTIFACTS ARE PRIVATELY OWNED AND SHOULD BE MAINTAINED WITH PRIVATE FUNDS. THE BUILDINGS AND GROUNDS ARE A MIX OF OLD AND NEW, AT BEST ONLY LOCALLY SIGNIFICANT, AND NO HISTORICALLY IMPORTANT COLLECTIONS ARE MAINTAINED. THE CENTER SPONSORS CLASSES IN "LEARNING-BY-EXPERIENCE," INCLUDING CHILDRENS' EXHIBITS THAT MAY BE TOUCHED BY THE PUPILS. CLASSES ARE GIVEN IN MUSIC, ART AND FOREIGN CULTURE. WE CAN PERCEIVE NO CONNECTION WHATSOEVER BETWEEN THE NATIONAL LEARNING CENTER AND THE PURPOSES OF THE NATIONAL HISTORIC PRESERVATION ACT OR ANY OTHER PROGRAMS OF THIS DEPARTMENT. MOREOVER, WE UNDERSTAND THAT THERE IS AT LEAST ONE SIMILAR ORGANIZATION, THE CHILDREN'S MUSEUM OF BOSTON, THAT PREDATES THE ENTITY HERE IN THE DISTRICT OF COLUMBIA. THE CONGRESS MAY WISH TO CONSIDER IF THIS BILL WILL BE USED AS A PRECEDENT FOR REQUESTS FOR CASH FROM OTHER ORGANIZATIONS ACROSS THE COUNTRY.

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FINALLY, MR. CHAIRMAN, THE CONGRESS HAS ALREADY ESTABLISHED AN INSTITUTE OF MUSEUM SERVICES IN PUBLIC LAW 94-462 OF OCTOBER 8, 1976. THE INSTITUTE, AN AGENCY WITHIN THE NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES, IS SPECIFICALLY AUTHORIZED TO MAKE MATCHING GRANTS TO MUSEUMS, AND AN AUTHORIZATION FOR THIS PURPOSE OF $45 MILLION FOR FISCAL 1985 IS ALREADY ON THE BOOKS. SEE 20 U.S.C. 967. NOT ONLY ARE THE GRANT PROVISIONS IN H.R. 2889 INAPPROPRIATE AS AN INTERIOR DEPARTMENT PROGRAM, THEY DUPLICATE AUTHORITY IN EXISTING LAW THAT THE CONGRESS HAS PLACED IN ANOTHER FEDERAL AGENCY.

WE STRONGLY RECOMMEND AGAINST THE APPROVAL OF THE FOREGOING PROVISIONS OF H.R. 2889. THE BILL HAS ONE ADDITIONAL FEATURE, THE AUTHORIZATION OF FUNDS FOR THE ADVISORY COUNCIL ON HISTORIC PRESERVATION. WE DEFER TO THE VIEWS OF THE COUNCIL, WHICH IS AN INDEPENDENT AGENCY, AS TO THE ENACTMENT OF THIS AUTHORIZATION.

THIS CONCLUDES MY PREPARED REMARKS, MR. CHAIRMAN. I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS YOU OR MEMBERS OF THE SUBCOMMITTEE MAY HAVE.

Senator WALLOP. Thank you very much, Director Grier. It is very lucid testimony I must say. At least at the moment I have no questions on it. It seems a very open-ended proposal, and one thing I know around here is that when you start closing ends, you start stepping on toes, but there is a level of accountability which I think all of us speak of. Whether we exercise it or not is genuinely questionable, but we speak of it all the time and give great speeches at home on the stump—it's time to get control of the Federal purse strings. And it is the endless propositions which are open-ended which may have a good purpose but still one has to question in light of all the other things whether that is a good public purpose.

I appreciate the testimony here this morning.

Director Edwards.

STATEMENT OF FRANK A. EDWARDS, ASSISTANT DIRECTOR, LAND RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. EDWARDS. Thank you, Mr. Chairman. I appreciate the opportunity to appear before this subcommittee this morning to discuss the Department's views on three bills. I will address my first comments to H.R. 2838. I have a prepared statement that I request be inserted in the record, and I will summarize my statement.

H.R. 2838 would authorize the Secretaries of the Interior and Agriculture to provide donated or surplus tree seedlings and technical advice and assistance to any public or private group volunteering to plant the seedlings on lands owned by Federal, State, or local governments.

We have no objection to enactment of H.R. 2838. For over 30 years the Bureau of Land Management has cooperated with Federal, State, private, and civic organizations in tree-planting programs. Examples include two volunteer tree planting programs in western Oregon. In a program that the Bureau has been associated with for over 25 years, we provide tree planting experience for schoolchildren living in the Lower Umpqua River area. The BLM provides seedlings, supervision, alternate-year planting sites, and miscellaneous support.

The International Paper Co. provides seedlings, supervision, alternate-year planting sites, equipment, and food.

The school district provides transportation. This program can plant up to 10 acres with up to 5,000 seedlings.

In a second example, the Coos County Education Service District and BLM cooperate to provide the schoolchildren of Coos County with tree planting experience. BLM supplies seedlings, planting tools, supervision, and planting sites. This program may involve several days, depending on the number of district schools participating.

This act is generally in keeping with the President's suggestion that citizens should make an effort to volunteer their services to improve America. For those reasons, we have no objection to its enactment.

That concludes my comments on that bill.

Senator WALLOP. Thank you.

Mr. EDWARDS. I have a statement on S. 2692 and H.R. 2982 and ask that my prepared statement be entered into the record.

Senator WALLOP. They will be.

Mr. EDWARDS. I will summarize my statement. The House-passed version of H.R. 2982 and S. 2692 are similar bills. H.R. 2982 relates to the irrigation systems whereas S. 2692 is broader in scope, encompassing water impoundments, storage, transportation, and distribution systems.

With regard to both bills dealing with the right-of-way, Mr. MacCleery has clearly stated the administration's position. I have nothing to add to the details of his statement. I have read that statement and would simply say that we, too, in the Department of the Interior oppose the enactment of these bills. Both bills, in effect, would provide a public subsidy for private use of public land and provide statutory relief for unauthorized use, thus penalizing those who conform to the pre-FLPMA right-of-way requirements and now hold valid existing rights which are preserved by FLPMA.

The bills would also burden land management agencies with many unnecessary procedural processes.

I would add that I, too, would volunteer our services and assistance in providing information on the bill to address those issues with which users are concerned. That concludes my statement.

I am available for any questions that you might have.

[The prepared statements of Mr. Edwards follow:]

JUN 28 1984

STATEMENT OF FRANK A. EDWARDS, ASSISTANT DIRECTOR, LAND RESOURCES, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON H.R. 2838, AN ACT "TO AUTHORIZE THE SECRETARIES OF THE INTERIOR AND AGRICULTURE TO PROVIDE ASSISTANCE TO GROUPS AND ORGANIZATIONS VOLUNTEERING TO PLANT TREE SEEDLINGS ON PUBLIC LANDS, AND FOR OTHER PURPOSES."

I appreciate the opportunity to appear before the subcommittee this morning to discuss the Department of the Interior's views on H.R. 2838.

H.R. 2838 would authorize the Secretary of the Interior and the Secretary of Agriculture to provide donated or surplus tree seedlings and technical advice and assistance to any public or private group volunteering to plant the seedlings on land owned by Federal, State or local governments. The seedlings could only be provided to those groups or organizations who have submitted planting plans which have been approved by the appropriate Secretary. The plan would contain a notice of plans to plant tree seedlings, a statement of the quantity of seedlings and the type of technical advice and assistance desired by the group or organization. In addition, the plan would indicate the proposed site of planting, together with evidence that the group or organization has received permission of the local State or Federal officer exercising control over the land to proceed with planting. Any person providing voluntary planting services would not be compensated by the Federal Government and would not be considered, by reason of having provided such services, a Federal employee.

We have no objection to enactment of H.R. 2838.

For over 30 years the Bureau of Land Management (BLM) has cooperated with Federal, State, private and civic organizations in tree planting programs. Examples include two volunteer tree planting programs in western Oregon. In a program that BLM has been associated with for over 25 years, we provide a tree planting experience for school children living in the Lower Umpqua River area. BLM provides seedlings, supervision, alternate year planting sites and miscellaneous support. The International Paper Company provides seedlings, supervision, alternate year planting sites, equipment, and food. The school district provides transportation. This program can plant up to 10 acres with up to 5,000 seedlings.

The Coos County Education Service District and BLM cooperate to provide the school children of Coos County with a tree planting experience. BLM supplies seedlings, planting tools, supervision and planting sites. This program may involve several days depending on the number of district schools participating.

This Act is generally in keeping with the President's suggestion that citizens should make an effort to volunteer their services to improve America, for which reason we would have no objection to its enactment.

I will be pleased to respond to any questions the subcommittee may have.

JUN 28 1984

STATEMENT OF FRANK A. EDWARDS, ASSISTANT DIRECTOR, LAND RESOURCES, BUREAU OF LAND MANAGEMENT, UNITED STATES DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON H.R. 2982, AN ACT "TO EXEMPT IRRIGATION CONVEYANCE SYSTEMS FROM FEES AND CONDITIONS UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976, AND FOR OTHER PURPOSES" AND S. 2692, A BILL "TO EXEMPT WATER CONVEYANCE SYSTEMS FROM FEES AND CONDITIONS UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976."

I appreciate the opportunity to appear before this subcommittee today to discuss the Department's views on H.R. 2982 and S. 2692.

The House-passed version of H.R. 2982 and S. 2692 are similar bills. H.R. 2982 relates to irrigation systems whereas S. 2692 is broader in scope, encompassing water impoundment, storage, transportation and distribution systems.

Both bills would amend section 501 of the Federal Land Policy and Management Act (FLPMA) to add a new subsection (c). Under H.R. 2982, new subsection (c) would grant rights-of-way for irrigation systems constructed before October 21, 1976, and in use between that date and October 21, 1983, for agricultural, livestock, or private domestic purposes. S. 2692 would grant rights-of-way for facilities and systems for the impoundment, storage, transportation, or distribution of water, constructed before January 1, 1985, and in use or placed in use between October 21, 1976, and January 1, 1985. It also would limit rental to $100 per year for any rights-of-way covered by S. 2692 and granted after January 1, 1985.

Under both bills, any existing right-of-way would remain in effect unless the holder notifies the Secretary of the Interior or the Secretary of

Agriculture, as appropriate, that he elects to be governed by the provisions of new subsection (c), in which case the existing right-of-way would be considered to have been relinquished and would terminate upon issuance of a new right-of-way.

Both bills would exempt from fees rights-of-way granted before October 21, 1976, unless such fees are required by the Act of Congress under which the grant of the right-of-way is claimed. H.R. 2982 would not allow fees for rights-of-way granted under new subsection (c). S. 2692 would not allow fees for rights-of-way issued before October 21, 1976, which are brought under new subsection (c).

H.R. 2982 would provide that all grants of rights-of-way would remain in effect so long as the systems are used solely for agricultural, livestock, or private domestic purposes. S. 2692 would provide that all grants of rights-of-way would remain in effect so long as the systems are used for water impoundment, storage, transportation or distribution purposes. The holder of the grant and his successors would have to comply with requirements specified in the bills to retain use of the rights-of-way. Those requirements in both bills are similar, with variations in the details. They provide for:

1. Recording the right-of-way;

2. Allowing the Federal Government and the public free and unrestricted access to, upon, and across the right-of-way;

3. Insuring that all physical facilities on a right-of-way are constructed, reconstructed, repaired, and maintained in a manner which minimizes damage to fish and wildlife habitat, and otherwise protects the environment;

4. Indemnifying the United States against any liability for damage to life or property arising from the holder's occupancy or use of the right-of-way; and

5. Removing all structures and improvements and restoring the site if right-of-way is relinquished, abandoned, or terminated.

Mineral and vegetative material, including timber, within a right-of-way granted by new subsection (c) would be reserved to, and would remain the property of, the United States but these resources could be used in case of emergency.

S. 2692 also provides for:

- A presumption of abandonment upon failure to comply with the continued recordation requirements;
- detailed filing procedures for applications;
- authorization to charge a maximum annual fee of $100 for rights-of-way granted after October 21, 1976; and
- procedures to protect against deterioration of the facilities on the right-of-way to the point of threatening life or property.

Both bills would amend section 505 of FLPMA to make that section inapplicable to rights-of-way granted under new subsection (c) of section 501 of FLPMA. Thus, the terms and conditions required by section 505 would not be included in rights-of-way granted under subsection (c).

We oppose the enactment of both H.R. 2982 and S. 2692. Both bills would in effect provide a public subsidy for private use of public land and provide statutory relief for unauthorized users, thus penalizing those who conformed to the pre-FLPMA right-of-way requirements and now hold valid existing rights which were preserved by FLPMA. The bills would also burden land managing agencies with many unnecessary procedural processes.

I will be pleased to respond to any questions the subcommittee may have.

Senator WALLOP. Let me just observe if I may that that last statement, the bill would burden land management agencies with many unnecessary procedural processes, is one which the public feels sometimes that they are subjected to as well. It has not gone unnoted—cartoons, columns, and expressions of outrage around the country. While it may in fact be a two-way street it is generally more heavily traveled in the opposite direction, and so I think what we would all seek to do at the end of this is to address the concerns that have been expressed which provided the power for this legislation, see if we can't get solved what is genuinely a problem to provide some assurance and address as well those problems to the extent that they are legitimate which the administration has raised.

I think in some instances your concerns or the administration's concerns are overstated in terms of the feelings of those who are supporters of this.

On the other hand, I do recognize the legitimacy as to what both you and Mr. MacCleery have said. I think we can find some way to resolve, provide some certainty, some predictability, some consistency, and a sense of fairness that will satisfy all parties and get us out of a situation where nobody is satisfied.

Mr. EDWARDS. Yes. We agree with that, Mr. Chairman.

Senator WALLOP. Thank you very much.

Mr. Mitchell.

STATEMENT OF LESTER L. MITCHELL, COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

Mr. MITCHELL. Thank you, Mr. Chairman. I believe Ms. Grier's statement very well sums up the agency's position on H.R. 2889 and we strongly endorse that.

I would like to add that while H.R. 2889 has no direct effect on us, we believe that such continued Government participation in the creation of the National Museum for the Building Arts is not consistent with this administration's priorities. If the museum is to truly become viable, its corporation must be given responsibility for the museum's physical home as well as its cultural direction.

On April 30, 1984, legislation was introduced, S. 2605, which will terminate Federal involvement in the museum through the transfer of the Pension Building in which the museum is housed to the museum corporation. Therefore, we are concerned that any decisions concerning H.R. 2889 be made in light of GSA-supported S. 2605.

In summary, S. 2605 guaranteed that the historical structure would be properly preserved, and maintained in a manner consistent with the needs of the National Museum of the Building Arts. S. 2605 mandates that the deed of conveyance contain a reverter clause which would return ownership of the property to the United States if the corporation has not operated a viable museum within 5 years of enactment of S. 2605.

We believe S. 2605 would encourage private funding of the National Museum and properly place control of the museum facility with the corporation.

[The prepared statement of Mr. Mitchell follows:]

STATEMENT BEFORE

THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER OF THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

June 28, 1984

L. L. MITCHELL

COMMISSIONER, PUBLIC BUILDINGS SERVICE

GENERAL SERVICES ADMINISTRATION

GOOD MORNING. I WELCOME THE OPPORTUNITY TO APPEAR BEFORE THE SUBCOMMITTEE TO DISCUSS H.R. 2889.

MR. CHAIRMAN, WITH THE ESTABLISHMENT OF THE NATIONAL BUILDING MUSEUM IN 1980, THE GENERAL SERVICES ADMINISTRATION WAS CHARGED WITH THE RESPONSIBILITY TO OPERATE, MAINTAIN AND REPAIR THE PENSION BUILDING WHICH WAS DESIGNATED TO HOUSE THE MUSEUM. TO DATE WE HAVE SPENT $7.3 MILLION IN THIS EFFORT. OUR LATEST PROJECT, THE RENOVATION OF THE GREAT HALL, WILL BE DELIVERED ON SCHEDULE IN DECEMBER, 1984.

WHILE H.R. 2889 HAS NO DIRECT EFFECT ON US, WE BELIEVE THAT SUCH CONTINUED GOVERNMENT PARTICIPATION IN THE CREATION OF THE NATIONAL MUSEUM FOR THE BUILDING ARTS IS NOT CONSISTENT WITH THE ADMINISTRATION'S DIRECTION AND PRIORITIES. IF THE MUSEUM IS TO TRULY BECOME VIABLE, ITS CORPORATION MUST BE GIVEN RESPONSIBILITY FOR THE MUSEUM'S PHYSICAL HOME AS WELL AS ITS CULTURAL DIRECTION.

ON APRIL 30, 1984, LEGISLATION WAS INTRODUCED (S. 2605) WHICH WILL TERMINATE FEDERAL INVOLVEMENT IN THE MUSEUM THROUGH THE TRANSFER OF THE PENSION BUILDING, IN WHICH THE MUSEUM IS HOUSED, TO THE MUSEUM CORPORATION. THEREFORE, WE ARE CONCERNED THAT ANY DECISIONS CONCERNING H.R. 2889 BE MADE IN LIGHT OF GSA-SUPPORTED S. 2605.

S. 2605 WOULD GUARANTEE THAT THE HISTORICAL STRUCTURE WOULD BE PROPERLY PRESERVED AND MAINTAINED IN A MANNER CONSISTENT WITH THE

NEEDS OF A NATIONAL MUSEUM OF THE BUILDING ARTS. ALSO, THE CORPORATION WOULD HAVE TO AFFORD THE ADVISORY COUNCIL ON HISTORIC PRESERVATION A REASONABLE OPPORTUNITY TO COMMENT WITH REGARD TO ANY RENOVATIONS OR ALTERATIONS.

FURTHER, S. 2605 WOULD MANDATE THAT THE DEED OF CONVEYANCE CONTAIN A "REVERTER CLAUSE" WHICH WOULD RETURN OWNERSHIP OF THE PROPERTY TO THE UNITED STATES IF THE CORPORATION HAS NOT OPERATED A VIABLE MUSEUM WITHIN FIVE YEARS OF ENACTMENT OF S. 2605.

WE BELIEVE S.2605 WOULD ENCOURAGE PRIVATE FUNDING OF THE NATIONAL MUSEUM OF THE BUILDING ARTS AND PROPERLY PLACE CONTROL OF THE MUSEUM FACILITY WITH THE CORPORATION. THEREFORE, WE RECOMMEND THAT S. 2605 BE ENACTED IN LIEU OF SECTION ONE OF H.R. 2889.

THANK YOU.

Senator WALLOP. Thank you very much, Mr. Mitchell, and we will look at that from the perspective that both of you have testified to.

Frank, let me begin by saying that I much admire what you have done as Assistant Director of BLM, and what I am about to say in no way is a reflection on you, but you have absolutely made my day, and I am going to keep this, frame this little sentence about burdening the land management agencies with unnecessary procedural processes, and you and others in the administration may hear that coming back. It's nice to know that we can all be caught in the same web. You know, when the world has gotten so complicated that everybody is confusing everybody, I think it may be the fact that we have arrived at the time where we might be able to address it.

Mr. EDWARDS. Thank you for the compliment, Mr. Chairman. Sometimes we say things we wish we could pull back.

Senator WALLOP. No. I like it. I don't want you to have it back.

Anyway, thank you all very much for your testimony. We appreciate it this morning.

Next is a panel on H.R. 2889—President Ann Lewin of the National Learning Center and executive director of the Capital Children's Museum; Executive Director Robert Garvey of the Advisory Council on Historic Preservation, accompanied by General Counsel John Fowler of that organization; Director Bates Lowry of the National Building Museum; and President Richard O. Haase of the National Building Museum.

Welcome, Mr. Garvey. If you would lead off the testimony inasmuch as you are with an executive agency, we would appreciate it.

STATEMENT OF ROBERT GARVEY, EXECUTIVE DIRECTOR, ADVISORY COUNCIL ON HISTORIC PRESERVATION; ACCOMPANIED BY JOHN FOWLER, GENERAL COUNSEL

Mr. GARVEY. Thank you, Mr. Chairman. I am Robert Garvey, Executive Director of the Advisory Council on Historic Preservation. I am here this morning substituting for our Chairman, Alexander Aldrich, who regrets his inability to come to Washington today because of a long-standing commitment.

I will testify on section 2 of H.R. 2889, that portion that deals with the Advisory Council, and make just a point or two from my statement which has been provided to the committee.

The Council continues its efforts to provide advice to Federal agencies in carrying out their historic preservation responsibilities. We do this through a variety of means—issuing formal guidance, helping agencies to internalize the systems or processes by which they themselves work at historic preservation, and finally, providing the comments of the Council as required by law through programmatic systems where we deal with large and complex matters in a package and programs that have similar activities, eliminating the need to deal with many projects on a case-by-case basis.

The success of these activities in recent years has encouraged the Council to take an action seeking the reauthorization of the appropriation at the level that was set by the Congress in the amendments of the Preservation Act in 1980. The Council did in fact take the action, and traditionally the Congress has provided the Council with authorization in 3-year increments.

Section 212 of the Preservation Act authorized the appropriations for the Council in fiscal years 1981-83, at $2.5 million. Public Law 97-35, the Omnibus Reconciliation Act of 1981, placed a limit on appropriations under authority of section 212 for fiscal year 1981-83, It included an authorization for 1984 at $2 million. During fiscal year 1983, the Council sought an amendment to section 212 to continue its authorization for fiscal years 1984 to 1986 at $2.5 million. This request was not acted upon and the authority of Public Law 97-35 was sufficient for the Council's fiscal year 1984 appropriation.

The original request is the basis for section 2 of H.R. 2889 which the House adopted.

I would be pleased, Mr. Chairman, to answer any questions or to provide any other information for the record, but our part in this bill is fairly limited, and this Council has taken the action requesting the reauthorization at the $2.5 level for the coming 3 years.

[The prepared statement of Mr. Aldrich follows:]

Advisory
Council On
Historic
Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

STATEMENT OF ALEXANDER ALDRICH
CHAIRMAN, ADVISORY COUNCIL ON HISTORIC PRESERVATION
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
JUNE 28, 1984

Mr. Chairman and Members of the Committee, I am Alexander Aldrich, Chairman of the Advisory Council on Historic Preservation. It is a pleasure to support H.R. 2889 as it relates to authorizing appropriations for the Council through FY 1989. The Council values the leadership and support that this committee has provided over the years on behalf of the national historic preservation program and welcomes this opportunity to appear before you.

As you know, the Council is an independent Federal agency created by the National Historic Preservation Act of 1966. The Council is composed of 19 members, including heads of Federal Departments, representatives of State and local government and the preservation community, and non-Federal members appointed by the President. We have two principal duties: to advise the President and the Congress on matters concerning the national historic preservation program and to oversee the process the Congress devised under Section 106 to protect historic properties from needless harm by Federal activities.

Under Section 106, we review about 2,000 projects each year ranging from the construction of reservoirs and highways to the rehabilitation of historic buildings and the issuance of Federal permits. Between 600 and 700 of these projects require consultation to deal with the effects on historic properties, with particular attention to mitigating adverse impacts. This process saves thousands of historic properties each year. It also saves the Government money for two reasons. First, because we reach a firm and definitive agreement with the Federal project agency as to treatment of historic properties, there is a clear record of that agency's compliance with the law, and successful legal challenges, halting or delaying worthwhile projects, are almost impossible. Second, our review quite often results in the selection of an alternative for protection of an historic property that costs less than the approach originally proposed by the agency.

Also important is the Council's statutory duty to make recommendations on policy matters affecting historic preservation. We have shared the results of our important studies with this committee in the past. Our major accomplishment this past year was the completion of a study on the impact of Federal tax laws on historic preservation. Mandated by Section 503 of the National Historic Preservation Act Amendments of 1980, this study

concluded that the present incentive system is achieving remarkable results and deserved to be continued with essentially minor improvements.

An important Council activity in the past few years has been our effort to help Federal agencies develop internal systems to deal efficiently with preservation requirements. We have emphasized programmatic consultation with agencies to harmonize the conduct of their principal missions with the policies of the National Historic Preservation Act.

The Council uses several mechanisms to attain this goal:

- Programmatic Memoranda of Agreement, in which the Council, one or more State Historic Preservation Officers, and the Federal agency agree on a program for treating historic properties in connection with some large or complex Federal activity; this program supersedes application of the regulations and is tailored to the needs of the agency, the particular activities, and the property types in question.

- Counterpart regulations and internal agency procedures, in which the Council and an agency consult to develop an agency's internal preservation policies and system, and embody these in some kind of guidance appropriate to the agency.

- Supplementary guidance, in which the Council publishes nonbinding guidelines interpreting Section 106 for use by agencies and others. In FY 1982, we issued three documents which have greatly aided Federal agencies in meeting their Section 106 responsibilities.

We have found that the resources invested in these efforts reap significant dividends over the long term for both the Council and Federal program agencies. It is with this record of achievement that we are pleased to support H.R. 2889's continued authorization of appropriations for the Council through FY 1989. Our authorization for FY 1984 is $2 million and our authorization request for FY 1985 and beyond is $2.5 million. This difference warrants a brief explanation, as the Council policy in this area has been to pursue unchanged authorization levels since FY 1981.

Traditionally the Congress has provided the Council with authoriations in 3-year increments. Section 212 of the National Historic Preservation Act authorized appropriations for the Council in fiscal years 1981-1983 at $2.5 million. Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, placed a limit on appropriations under the authority of Section 212 for fiscal years 1981-1983. It also included an authorization for FY 1984 at $2 million. During FY 1983, the Council sought an amendment to Section 212 to continue its authorization for fiscal years 1984-1986 at $2.5 million. This request was not acted upon and the authority of Public Law 97-35 was found to be sufficient for the Council's FY 1984 appropriation. The original request is the basis for Section 2 of H.R. 2889, which the House adopted.

The Council has considered this legislation an opportunity to seek any adjustments it may deem necessary to improve its operations. During consideration of H.R. 2889 in the House, the question of the Council's authority to implement Section 106 was addressed. We were pleased to see that no further legislative action was found to be necessary to authorize the Council's current conduct of Section 106 reviews. Accordingly, we support Section 2 of H.R. 2889 as it currently stands.

The Council appreciate the opportunity to testify before this committee and urges your prompt and favorable consideration of this issue.

Senator WALLOP. Thank you very much, Director Garvey. That is perhaps a more straightforward and less complicated part of this legislation than some of the others, and I appreciate your testimony.

President Lewin.

STATEMENT OF ANN W. LEWIN, FOUNDER AND PRESIDENT, NATIONAL LEARNING CENTER

Ms. LEWIN. Thank you, Mr. Chairman. It is a great pleasure to be here and have an opportunity to explain to you the work that we are doing at the National Learning Center.

We are living in a nation where we pride ourselves on the consideration that we give to our children, yet in this Capital City, which is a world capital, there is no institution that focuses exclusively on the needs of children for improved educational, cultural, and recreational activity.

It was for this reason that I established the Children's Museum about 7 years ago. In the 6 years that we have been serving a large and increasingly large public audience we have more than justified the need for such an institution in the Nation's Capital.

The scope of our programs is very broad. We are modeling new technologies. We are teaching educators, both teachers and administrators, how to do innovative programming. We are providing alternatives to some of the mindless recreational pasttimes that the youth of this country are engaged in today. We are providing them with wholesome alternatives for themselves and for their families.

It is for this reason that we have a national scope in our programs. We can demonstrate this in letters of request that come to us from all over the country from educators, from people who are running similar institutions, and the many requests from abroad. The State Department brings First Ladies from other countries frequently to look at works that we are doing as an example of this Nation's commitment to innovative and worthwhile programs for its youth.

In 1980 we received a significant grant from the Department of the Interior to establish the communication wing of the museum which has since become a model of its kind both here and abroad. The work done under that grant was then cited for excellence as one of the projects funded nationally under that Interior Department programming.

If you look through the testimony at our financial track record, you will see that we in 5 years have put sources of earned income together that today account for almost 45 percent of the $2 million budget. It is fully our intention to continue to develop the earned income capacity of the Institution. To that end we have just put a new committee of businessmen together who will help us look at ways to exploit both the building and the programs in terms of their potential to continue to generate income.

If you look at the financial information, you will also see that we have built up a very broad base of public support, non-Government support, for the Institution, but the particular problem that we face in this city is the catch-up. There is a gap between what we have been able to do for ourselves and the growth that we need to

attain over the next several years. We are not coming to the Federal Government and saying help us so that we can cease the efforts that have already been so successful. We are saying that there is a gap.

It's like the old nursery rhyme for want of a nail the shoe was lost, for want of a shoe the horse was lost. We don't want to be in that position with our Institution. We are asking for a percent of the cost of maintaining the Institution for a period of years while we can continue to put together the means to support ourselves and to increase the broad-based support that we have gotten from the public in recognition of the programs that we offer.

In the bill H.R. 2889, the excellence and the unique service of our Institution is recognized, and in light of the excellence, H.R. 2889 calls for a management study, that the heads of several Government agencies take a look at what the best long-term provisions for this kind of institution will be, and we would very much look forward to the opportunity of working together with other experts in preparing that kind of management study.

I would like to make one further comment, and that is to emphasize a particular problem that we face in Washington, DC. If you look at similar institutions in other parts of the country, you will see that the State and local government support for such institutions amounts to better than 35 percent of their annual operating budget. In our case, we have had less than 8 percent from Government sources because there is no effective local organization and we have no State that we can turn to for help in this area, so the precedent for Government support is very strong for other institutions, but in Washington there is no place that we can turn except to our Federal Government for help, so I will be glad to answer any additional questions on this information that I have presented this morning and that we have in the written testimony raised, but we make an urgent plea that we be allowed and helped with the gap based on the very strong record that we have demonstrated in generating support, and in quickly in a very short number of years establishing a highly viable and vital model of ways to improve educational and recreational opportunities for youth.

Thank you very much.

[The prepared statement of Ms. Lewin follows:]

The National Learning Center

Capital Children's Museum
Learning Opportunity Center

800 3rd Street. N.E.
Washington. D.C. 20002
202/543-8600

Ann W. Lewin
President

Testimony before the Subcommittee on
Public Lands and Reserved Waters of the
Senate Energy and Natural Resources Committee

June 28, 1984

A Case for Support of The National Learning Center
by Ann W. Lewin, Founder and President

Mr. Chairman, and members of the Committee, I thank you for inviting me to appear before you this morning. It is an honor to have an opportunity to provide you with information about The National Learning Center and why it merits federal support.

I. Background

I created the Capital Children's Museum seven years ago because of my deep commitment to improving educational and recreational opportunities for the children of this nation. Before establishing the Museum, I had launched two schools and a day care center. Just this March, we opened a school for drop-out youth located within our facilities at the site of the Museum. Today, it is even more imperative than it was in 1977 to have models of excellence in programs for youth as we face the 21st century.

The United States prides itself on being child-centered. Yet, in the nation's capital there was no facility dedicated solely to innovative programs for youth, programs which would serve as a stimulus to schools and youth organizations across the nation and as a showcase for other countries. Thus, Capital Children's Museum was founded as the means to create and operate programs

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with these goals:

1. Stimulate children intellectually and keep alive or rekindle their innate love of learning.
2. Provide ways for families to use leisure time together which are alternatives to the mind-deadening pastimes that have proliferated over the past two decades.
3. Supplement school curricula with activities which are entertaining but which at the same time awaken youth to the excitement of science, the arts and humanities, and new technologies.

In choosing these goals, we determined that we would make a commitment to serve persons who are handicapped, who are economically disadvantaged, and who are elderly. We have fulfilled these goals in the following ways:

1. Handicapped Programs - The Museum serves persons who are handicapped in the same numbers as these persons are distributed throughout the population. Thus, 8,000 (8%) of the groups who visit are handicapped - blind, deaf, mentally retarded, emotionally distrubed, learning disabled, or otherwise impaired.
2. Economically disadvantaged - The Museum intentionally sought a permanent location where it would be in close proximity to persons with meager financial resources. Thus, the Museum is located on the H Street corridor, a neighborhood not yet recovered from the riots in 1968, and one of Washington, D. C.'s poorest.
3. Elderly - The Museum established a program for senior citizens which today has more than 100 volunteers, many from the immediate neighborhood, others who are shut in old age homes. Thus, we are able to demonstrate how to put to use the knowledge which our elders have accumulated, and at the same time we are able to demonstrate how to integrate elders into positive, meaningful activities where they can take full part in the joy, love, and bustle of a vital institution.

3.

In October, 1977, the Museum opened three rooms of exhibits in space donated by the D. C. Board of Education, the first time an outside group had ever been permitted to use school space free of charge. In March, 1979, we reopened in a permanent site, three acres, a full city block, located behind Union Station. It has large, open gardens and 150,000 square feet of space in huge, old, rambling buildings.

The permanent site was purchased with a grant of $1.7 million from HUD. Funds enabled the Museum to own its facility outright. The HUD grant was awarded as a model to demonstrate how this educational/recreational facility could be a force for the stabilization and revitalization of a severely depressed neighborhood and as a model of innovative urban development. In fact, the Museum, by virtue of its location on the H Street Corridor, has brought together persons of all backgrounds and nationalities in a remarkable demonstration of how to integrate black and white, rich and poor, city and suburban, community residents and world leaders. Moreover, as an example of its impact in the area of human resources, in 5 months between January 1, 1984 and May 31, 1984, neighborhood residents involved in the Museum included:

Paid employees	-	112
Adult volunteers	-	65
Senior volunteers (over age 60)	-	196
Youth (under age 14)	-	91

II. Programs for 250,000 Visitors Annually

Current programs in operation at the Museum are described below and are illustrated pictorially in the materials accompanying this statement.

1. Public museum programs

   1) The Museum is open to the public on this schedule:

      Tuesday through Saturday 10 to 4

      Sunday 1 to 5

   2) Visitors pay $2/person (senior citizens - $1; neighbors - free) for access to 40,000 square feet of exemplary "hands-on" exhibits which number in the hundreds

4.

3) Special free activities include
   -- educational games on 20 computers
   -- crafts to make and take home
   -- food making and tasting
   -- changing menu of workshops

4) Regular paid programs include
   -- clowns, magicians, mimes
   -- guided use of computers
   -- formal computer instruction
   -- film making and other workshops

2. Guided school and other group tours, by advance reservation

3. Afterschool, weekend and summer programs for 200 neighborhood children and youth

4. Summer employment training programs for disadvantaged youth

5. Volunteer training and recognition for 200 adults, 120 of whom are over age 60

6. Guided internships for 75 high school and college youth

7. Apprenticeships for 30 youth age 11 to 14

8. Regular program of training for staff and volunteers in serving the handicapped, their parents, and teachers

9. Teacher training programs in science, arts, and the humanities (some supported by NSF, NEA, NEH, and U. S. Department of Education)

10. Production of handbooks for professionals in education, recreation and related fields on techniques and methods developed by CCM

11. Artist-in-residence programs to enrich the public, to train staff, and to create exhibits

In March, 1984, with major support from The Ford Foundation, the Museum opened a school for disadvantaged youth, age 16 - 21. Its goal is to upgrade academic skills so youth can obtain the GED (high school equivalency diploma) and to help youth obtain unsubsidized employment. The

5.

characteristics of the school include:

1. Enrollment of 120 youth who are out of school and unemployed
2. Self-paced program with lessons individualized to match the specific needs of each student and one-to-one instruction
3. Use of computers and curricular materials that cover from grades K through 12 in both academic skills and functional competencies (using public transportation, balancing a checkbook)
4. Training in the behaviors essential to obtaining and keeping a job - responsibility, punctuality, dependability

The school represents a radical effort to interrupt the poverty cycle so that its students do not become part of the "permanent underclass". The program is cost effective: 12 weeks cost $750 compared to one week in a detention home which costs $750. Three-quarters of the school enrollment is through referrals from the courts and detention homes. Already, after less than four months' operation, the retention rate at our school is 20% above the national average for schools and programs serving similar populations of youth.

Official ceremonies to commemorate the school will take place in the Museum's auditorium on July 11. Honored guests who will speak include Mrs. George Bush, Mrs. Strom Thurmond, and Dr. Vincent E. Reed.

On June 23, 1984, the National Science Foundation awarded the Museum $825,000 to develop a prototype learning lab. The lab will be developed in conjunction with scientists and elementary school teachers. One goal is to create an environment, complete with large exhibits, table-top activities, microcomputer programs, and activity cards, that will teach elementary school youth about one specific area of science and about scientific process. A second goal is to make the lab cost effective so that schools across the country will be able to afford to purchase one.

6.

III. Audience

The National Learning Center serves persons from metropolitan Washington, D. C., all fifty states, and numerous foreign countries. Figures include:

Annual attendance	250,000
Average daily attendance	
Weekdays	500
Weekends	1,000
Handicapped visitors	20,000
Tourists to Washington, D. C.	60,000

Because it is located in Washington, D. C., the Museum is frequently called on to perform special functions for dignitaries from here and abroad and to provide technical assistance to professionals in other museums, schools, and recreation centers. A sampling of activities in these areas includes:

1. Written requests for technical assistance since opening:
   Foreign countries - 40
   States in the U.S.A. - 47
   (see attached list)
2. Displays of art by youth from around the world including France, Cyprus, Saudi Arabia, Egypt, the Arab States, the People's Republic of China and Sweden.
3. Official State Department visits from dignitaries including Queen Beatrix of the Netherlands, Queen Noor of Jordan, and First Ladies from, among other countries, Germany, Australia, Cyprus, Egypt, Israel, Japan, Zaire, Portugal and Zimbabwe.
4. Non-State Department visits from international dignitaries including the President of the Republic of Togo, First Ladies from Ecuador, Lebanon, New Zealand and Costa Rica.
5. Delegations of youth leaders and educators sent by U.S. government agencies including the Department of Education, U.S.I.A., and National Science Foundation from countries including the People's Republic of China, Korea, Indonesia, Japan, and the Philippines.
6. Special programs for numerous groups from the United States including wives of the Governors, wives of members of the

7.

National Academy of Science, National Association of Elementary School Principals, Urban School Superintendents' Network, and numerous conferences for computer educators.

7. Ceremonies for many different purposes including the dedication of U. S. Postal stamps, the celebration of the tenth anniversary of the Head Start Program, the establishment of the Department of Education, official USDE national teleconferences, and Save the Children.

Documented written requests for technical assistance are broken down by year, country, and state in Appendix A.

IV. Funding

Financial information provided with this report shows these facts:

1. Steady climb in the amount of income which the Museum earns from 4% of its budget (or $18,000) in 1979 to 44% of its budget (or $783,000) in 1983. This growth reflects a strong commitment on the Museum's part to be self-supporting to the greatest extent possible, and to continue to establish means to generate income. To that end, the Trustees have recently established a committee of business leaders to assist in the effort to develop new means of self-generated income. Sources to date have included:
    1) rental of currently unused parts of the building
    2) income from admissions, gift shop, and related services
    3) income from royalties on computer software created by the Museum

    Future sources of income currently being explored include:
    1) development of the retail potential of the site
    2) creation of publications and other products

2. Marked increase in the number of contributions from corporations, individuals, and foundations, from 39 in 1978 to 220 in 1982, and

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significant increase in size of the average gift from $1,925 to $3,450. The Museum continues to maintain an aggressive fund raising posture in the search for new contributors from the private sector.

3. Support in competitive project grants from numerous government agencies including the National Endowment for the Arts, the National Endowment for the Humanities, the National Science Foundation, the U.S.Department of Education, the Department of Labor (CETA), the Heritage Conservation and Recreation Service, and the one-time funds for acquisition of the building from HUD. These grants, however, support specific projects which require additional staff and the operation of a new program or development of a product. Thus, while they are prestigious, they do not meet the need for support of basic operating costs like utilities, janitors, and other maintenance.

4. Maintenance costs for janitors, security staff, maintenance supplies, utilities, on-going repairs, and exhibit maintenance of more than $689,000 annually. These costs are unglamorous and will rarely be borne by fundors.

5. The Museum has no local or state government support in contrast to other similar institutions which can count on city and state support ranging from 12% to 95% of their total budget. The average amount of government support for similar institutions is 36.7%; this Museum's government support is 7.5%, none of which is from city or state sources.

Independent fund raising experts who have reviewed the Museum's history and pattern of financial support consider its track record exceptional in terms of both total amount of dollars raised and growth in the numbers of supporters.

V. Recognition

The unique contributions of The National Learning Center and the excellence of its programs are recognized in its stature as a leader in its field, the fine reputation it has among professionals in museums, education, and related

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fields, and the increasing demand by the public and by professionals for its services. Specific instances of recognition are:

1. Capital Children's Museum was one of eight museums selected from the more than 8,000 museums nationally and was the only children's museum cited for having ". . . played a role at the most innovative edge of elementary and secondary education in mathematics, science and technology. . . " by the National Science Board Commission in its report to the American people and to the National Science Board on Educating Americans for the 21st Century (page 86).

2. Epcot Center's brochure on communications lists Capital Children's Museum as one of four places to visit and cites the Museum's new COMMUNICATION wing as "One of the largest communications exhibits in the world."

3. Selection in a poll of readers of Washingtonian Magazine as the #2 attraction in Washington, D. C. for children. (The Zoo was #1, and the Museum ranked ahead of the Air and Space Museum).

4. Award from the Interior Department's Heritage, Conservation and Recreation Service as one of several area organizations commended for outstanding contributions to conservation and recreation.

5. 1979 Washingtonian of the Year Award to Ann Lewin for establishing the Museum.

In addition to formal recognition, the Museum receives dozens of letters from all over the country and abroad praising its exhibits and programs. Three examples of these letters are included in the materials accompanying this statement.

VI. Case for Support of The National Learning Center

The National Learning Center is a unique institution that serves a national constituency in a number of special ways, many of which are a

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result of its location in the nation's capital. For these reasons, there is a strong case for federal assistance in the form of funds to help support the maintenance costs of the Center:

1. The Museum answers the need for a national showcase for high level dignitaries and professionals from here and abroad who seek models of innovative ways to stimulate the minds of youth.

2. The Museum provides a model of how a museum (or similar facility) can be used to address needs of disenfranchised citizens, namely the elderly, the poor, minority groups, and the handicapped.

3. The Museum is a leader in the use of new electronic technologies and especially their use in public education/recreation settings. Public demonstration of these technologies is a national imperative in a period when these technologies are stimulating rapid change and widespread upheavel across all areas of society.

4. The Museum is a pioneer in the design and implementation of new forms of science and math education, and, because of its location in Washington, D. C., it is called on to be a catalyst for others' initiating or improving programs in math and science.

An unusual combination of factors requires the Museum to seek federal assistance. These factors include:

1. Lack of industry in the nation's capital as a source from which to draw funds.

2. Lack of city funds, no state funds, and no representation in Congress to support the institution as similar institutions are supported in their states.

3. Competition from a larger number of charitable organizations than exist in most other cities.

In seeking federal assistance, the Museum assures this committee that it will continue its own efforts to earn income and to obtain contributions

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at the same intense level that it has maintained since its inception. However, until such time as the Museum is able to amass endowment funds and increased earned income, it is urgent that the federal government help close the funding gap. The Museum has demonstrated both excellence in its programs, unique service to the nation, and an exceptional ability to generate funds. BUT, the critical gap, resulting almost entirely from conditions unique to Washington, D. C., must be met with federal assistance if the Museum is to continue its work.

I am very appreciative of the Committee's attention to this testimony and will be glad to offer additional information and to provide personal tours of the Museum for members of the committee at their convenience.

REQUESTS FOR TECHNICAL ASSISTANCE

CAPITAL CHILDREN'S MUSEUM

Documented inquiries from people who wish to start a children's museum or institutions who wish to add similar exhibits:

1977	1978	1979	1980	1981	1982
Belgium	Australia	Australia	Canada	Australia (2)	Austria
---	Canada	China (Peoples' Republic)	Equador	Austria	Canada (4)
Colorado	Germany	France	Hungary	Bolivia	Chile
Florida	---	Germany	Sweden	Brazil	Denmark
Illinois	Alabama (2)	Kenya	---	Canada	England
Indiana	California (3)	Korea	Alabama	France (3)	France
Ohio	D. C.	Mexico	Arizona (2)	Israel (2)	Germany
Oklahoma	Florida	---	California (2)	Japan	India
Pennsylvania	Georgia (3)	Alabama (3)	Colorado	Mexico	Israel (3)
Virginia	Indiana	California (3)	Delaware	Philippines	Italy (3)
	Iowa	Connecticut	Iowa	Spain	Japan
	Maine	Georgia	Maryland	---	Mexico
	Maryland	Illinois	Michigan	Alabama	Netherlands
	Massachusetts (2)	Indiana (3)	Minnesota	California (3)	Spain
	Missouri	Kentucky	No. Carolina	Florida (2)	Sweden
	Nebraska	Maryland (2)	Ohio	Indiana (2)	Venezuela
	New Jersey	Massachusetts (2)	Oregon	Louisiana (3)	Virgin Islands
	Ohio	Michigan	Pennsylvania	Maine (2)	---
	So. Carolina	Missouri	Texas	Maryland	Arizona
	Texas	New Jersey (4)	Utah	Massachusetts (2)	California (11)
	Virginia	New Mexico (2)	Virginia	Michigan	Colorado
	Wisconsin	New York	Washington	Missouri	District of Columbia
		No. Carolina (2)	West Virginia	New Jersey	Florida (5)
		Pennsylvania (5)		New Mexico	Georgia (2)
		Rhode Island (2)		New York (4)	Illinois (3)
		Texas		Ohio (6)	Indiana
		Virginia (2)		Pennsylvania (5)	Iowa (3)
		Wisconsin		So. Carolina	Louisiana
				Tennessee	Maryland (4)
				Texas (3)	Massachusetts
				Utah (3)	New Jersey
				Virginia (2)	New York (10)
				Washington	North Carolina (4)
				Wisconsin (2)	Ohio (7)
					Oklahoma
					Orgeon
					Pennsylvania (4)
					Rhode Island (2)
					South Dakota
					Tennessee
					Texas (5)
					Wisconsin (3)

NOTE:

Total: 531 requests from 40 foreign countries and 47 states.

6/22/84

Continued

documented inquiries from people who wish to start a children's museum or institutions who wish to add similar exhibits.

1983

Argentina (2)
Australia (2)
Canada (9)
Colombia
Costa Rica
Egypt
England
France (2)
Ireland
Israel
Japan
Madagascar
Mexico
The Netherlands
Pakistan
Venezuela

Alabama
Arizona (3)
California (8)
Colorado (5)
Connecticut (4)
Florida
Georgia
Illinois (4)
Indiana (6)
Iowa (6)
Kansas
Louisiana (2)
Maine
Maryland (12)
Massachusetts (4)
Michigan (5)
Minnesota (5)
Missouri (2)
Montana
Nebraska (3)
New Hampshire
New Jersey (14)
New York (12)
North Carolina
Ohio (14)
Oklahoma (2)
Oregon (2)
Pennsylvania (9)
Rhode Island
South Carolina (2)
Tennessee (5)
Texas (5)
Virginia (13)
Washington (4)
West Virginia
Wisconsin (2)

1/1/84-6/22/84

Algeria
Canada
El Salvador
England (2)
France (2)
Indonesia
Israel (2)
Jordan
Rep. of Korea
Norway
Sweden

Alaska
California (3)
Florida (2)
Georgia
Hawaii (2)
Idaho
Illinois (5)
Indiana
Louisiana
Massachusetts (2)
Minnesota
Mississippi (2)
Missouri (2)
New Mexico
New York (6)
Pennsylvania (12)
South Carolina
Texas (2)
Virginia (3)
Washington
Wisconsin

Capital Children's Museum

800 3rd Street, N.E. • Washington, D.C. 20002
Dial: (202) 543-8600 or MET-KIDS

PROFILE OF INCOME

FISCAL YEARS 1979-1983[1]

	1979	1980	1981	1982	1983 thru June 30[2]
SELF GENERATED:					
Admissions	-0-	40,729	66,431	190,204	320,668
Royalties	-0-	-0-	-0-	39,152	53,325
Space Rental	7,787	-0-	102,683	280,792	311,460
Gift Shop, Membership, etc.	11,101	18,853	85,106	86,276	98,082
Subtotal	18,888 (4%)	59,582 (8%)	254,220 (22%)	596,424 (30%)	783,535 (44%)
PUBLIC/PRIVATE SECTOR:					
Government Grants	172,172	230,499	265,990	151,898	125,612
Foundation, Corps. & Individuals	274,967	324,960	333,275	529,007	682,279
Fundraising Events	10,977	-0-	143,184	102,967	94,437
Contributed Services/Materials	-0-	136,613	151,755	644,732	78,500
Subtotal	458,116 (96%)	692,072 (92%)	914,204 (78%)	1,428,604 (70%)	980,828 (56%)
TOTAL	$477,004	$751,654	$1,168,424	$2,025,028	$1,764,363
CAPITAL CONTRIBUTIONS:					
Building Purchase		1,234,100	455,311		
Exhibit Installation				413,857	
GRAND TOTAL	$477,004	$1,985,754	$1,623,735	$2,438,885	$1,764,363

1) Fiscal year = July 1 - June 30. Budget year = calendar year.
2) Cash basis, books not closed to accrual basis at this time.

Capital Children's Museum

Government Support for Children's Museums

Institution **	1982 Annual Budget	Total Gov't Funds $	Total Gov't Funds %	City	State	Federal
Boston Children's Museum	$2,000,000	$600,000	30%	0	20%	10%
Brooklyn Children's Museum	$1,400,000	$840,000	60%	55%	3%	2%
Corpus Cristi Museum Corpus Cristi, TX	$500,000	$475,000	95%	95%	0	0
Discovery Place Ft. Lauderdale, FLA	$1.800,000	$756,000	42%	(no breakdown available)		
Exploratorium San Francisco, CA	$2,700,000	$486,000	18%	6%	6%	6%
Impressions V E. Lansing, MI	$500,000	$105,000	21%	3%	15%	3%
The Children's Museum in Indianapolis *	$3,500,000	$135,000	3%	2%	0	1%
Sunrise Charleston, W. VA.	$406,000	$98,830	24%	(no breakdown available)		
Capital Children's Museum Washington, D. C.	2,025,028	$151,898	7.5%	0	0	.7.5%

* This Museum is unique in this group because of its heavy endowment from The Lily Foundation.

** Government support for these institutions averages 36.6% of annual budget.

7-15-83

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Capital Children's Museum

MAINTENANCE/SECURITY COSTS

	(FTE)	PLANT MAINTENANCE	(FTE)	ENGINEERING	(FTE)	PROGRAM MAINTENANCE	(FTE)	SECURITY	(FTE)	TOTAL
Salaries & Benefits	(7.5)	74,040	(1.75)	47,000	(7)	121,653	(9)	88,300	(25.25)	330,993
Outside Contractors		49,142 *		16,000		-		-		65,142
Repair Supplies		37,514		10,257		67,710		-		115,998
Maintenance Supplies		11,457		-		-		-		11,457
Utilities		145,162		-		-		-		145,164
Insurance		-		-		-		20,000		20,000
Other		400		-		523		-		923
TOTAL	(7.5)	317,715	(1.75)	73,257	(7)	189,886	(9)	108,817	(25,25)	689,675

* Boiler/Fire Alarm, extinguishers/Sprinkler system/Roof,elevator/Telephone.

CL 6/30/83

The New York Times

Sunday, April 12, 1981 TRAVEL Section 10

A Capital Museum That Invites Kids To Participate

By BARBARA GAMARekian

A small, dark-haired girl in a construction worker's hard hat popped her head out of an open manhole and shouted in joyful discovery: "Hey, there's a car up here!"

Sure enough, a slightly battered white car sat next to a fire hydrant and five little children climbed out of the simulated subterranean space (filled with the kind of pipes that underlie all our cities) and piled into the car. As one sat behind the wheel and played driver, the others stuck their heads out the window and cheerily cried, "Goodbye, goodbye!"

It was the "city room" of the Capital Children's Museum in Washington, and there were children everywhere. Four-year-old Marlene was in the life-sized telephone booth intently dialing Larry, her nursery-school friend, who answered the yellow phone as it rang in the adjacent kitchen. Peter had donned a mail carrier's jacket and his mail pouch — almost as big as he — trailed along as he made his rounds. As the bright red fire-department alarm bell clanged and a small boy in faded jeans played fireman, Sara — a motorman's cap perched jauntily on her butterscotch-colored curls — beeped the horn and pretended to make change from a coin changer as friends climbed aboard the cross section of a city bus.

The four-year-old museum — on the corner of Third and H Streets N.E., an easy walk from the Capitol — is a world of magic, perfect for pretending and as captivating to adults as to children. For visitors with small children who are coming to Washington to see the displays of dogwood, azaleas and rhododendron one of these spring weekends, the museum offers a change of pace from the usual relentless round of sightseeing. It invites children to touch objects and to move among and within its exhibits.

Originally run as a "museum without walls" at locations on the Potomac and on the Mall, it now has 40,000 square feet of exhibit space in a Capitol Hill complex of Victorian red brick buildings that formerly housed a convent and hospital run by the Little Sisters of the Poor. The museum is a private institution supported primarily by contributions, fund-raising events and foundation and corporate grants.

Recalling the start of the institution, Ann W. Lewin, its director, said:

"We were told by the museum people here 'You're crazy, there's no need in this city for another museum,' but we told them we wanted to throw out the glass cases and do something quite different — engage a child's whole body."

Then she paused and added: "You know, it's funny; we give children sand and water and blocks when they're 3 years old, and then we take them away and don't give them back [illegible] we are trying to turn them into engineers."

The museum's "city room" brings a city down to the size of a child, and wherever a child goes in the museum, he or she gets involved.

In the "simply machines room" children are hoisting concrete blocks on a simple pulley and dismantling typewriters to see how they work. A nine-foot copper-wire sculpture provides a maze-like pathway of inclined planes for a bearing to make its way to the bottom. There is a model Archimedean screw that bails water from a tank, and across the room three boys are playing on wood and rope swings designed to balance like a scale.

The "living room" is equipped with soft sculpture; fish nets, foam rubber, plastic tubes, draped parachute material with which the children can transform and shape the room to suit their purpose. Even the ceiling — a latticework of pipes — can be raised or lowered. Boxes of all sizes can be pushed about or worn; lights can be turned on or off, and children are free to experiment with shapes and space.

In the "think metric room" (donated by the Bureau of Standards) 10-year-old Michele was weighing herself and a blue suitcase, marked 15K, on the metric scale. Eggplants at $2 a kilogram and potatoes at 10 cents a kilogram could be purchased. Shoes were calibrated in centimeters and even the Lincoln logs were calibrated metrically.

The work of the museum has been supported by several of the embassies in Washington, and a continuing series of art and craft exhibits add an international flavor. Last year, children's art from China was on display. Last month, Jihan Sadat, the wife of President Anwar Sadat of Egypt, opened an exhibit of artwork entitled "Egypt Through the Eyes of Her Children."

A visitor pretending to be a telephone lineman at the Capital Children's Museum.

continued →

Next fall, the artwork of Saudi Arabian children will be shown.

The Mexican Government helped to transform the convent's old chapel with its 25-foot ceiling, flying arches and Corinthian columns. Now there are leafy trees, a tile fountain that spurts water nine feet into the air, a straw market with clothes for children to dress up in, a store painted turquoise with bins of grains, soaps, tins of Mexican food, scales and weights and measures, and a stucco well with a windlass and bucket and galvanized tin liter-sized containers for measuring water.

Aroon Shivdasani was there with her daughter, 3-year-old Sasha, who was completely absorbed in feeding Rosie, the goat.

"This is fantastic that you can touch and feel," exclaimed Mrs. Shivdasani. "The last time we were here, she didn't want to leave — when she comes here she completely forgets about me."

In a Sierra log house with sod floor where tamale husks and dried corn and peppers hang from the rafters, children grind corn on a metate (stone), cook on a comal (little stove) and eat tamales and tortillas.

In an adjoining room four little boys had piled onto a Harley-Davidson motorcycle that was equipped with a police radio and siren while a pigtailed little girl popped envelopes into a mailbox and two children played at the Teletype. Across the way a group of children, some in wheelchairs and some on crutches, were creating designs with hot wax and yarn, as others used a mortar and pestle to grind chocolate with the help of Richard Jackson, one of the 90 elderly neighborhood people who are volunteers at the museum.

"A museum like this just drinks people," said Mrs. Lewin. There is a staff of 60 plus 150 volunteers, and the program is geared primarily to children from pre-school through the elementary grades; more than 100,000 visited the museum last year.

A communications exhibit, to be completed this fall, will be of interest to older children. The 10,000-square-foot exhibit, under construction with a $250,000 grant from the International Telephone and Telegraph Corporation, will trace communications from when people lived in caves to contemporary times, the latter with a video studio and a satellite-signal station.

The "patterns and shapes room," equipped with puzzles and games, is a favorite with parents, said one staff member, since it has places to sit and relax. The orientation theater in the Mexican exhibit is also such a spot.

The museum (202-544-2244) is open six days a week: 10 A.M. to 4:30 P.M. Tuesday through Friday, 11 A.M. to 4:30 P.M. Saturday and 1 to 4:30 P.M. Sunday. Admission is 50 cents for children and $1.50 for adults. Weekdays group visits are scheduled for 10 A.M., 11:30 A.M. and 1 P.M. If you arrive at those times, it is often possible for children to join a group.

A snack bar is to open in June; beverages are currently available from vending machines. Visitors are encouraged to bring picnic lunches and, with warm weather, picnic benches are set up on the grounds around the museum.

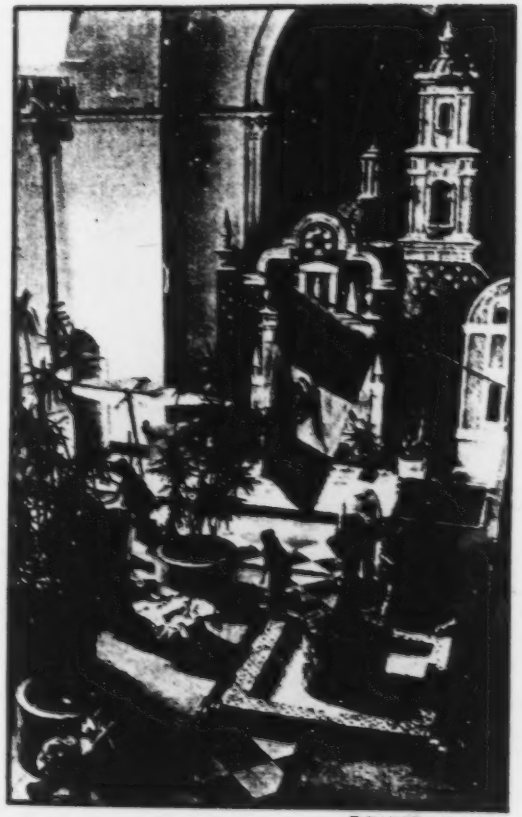
"We encourage parents to come with their children, for we really feel it is a family learning center," said Mrs. Lewin. "There are so few wholesome things that families can do together — we feel they are missing a really good thing if they just drop the child off and run."

After a visit the museum's motto, an old Chinese proverb, becomes crystal clear: "I hear and I forget, I see and I remember, I do and I understand." ■

BARBARA GAMAREKIAN works in the Times's Washington bureau.

*NEW HOURS: TUESDAY - SATURDAY 10-4
SUNDAY - 1-5

ADMISSION: $1.00 CHILDREN, $2.50 ADULTS
$1.00 SENIORS



The New York Times / Teresa Zabala

A tile fountain and terra cotta-color cathedral facade are features of the Mexican exhibit area

Wednesday, May 21, 1986 / B 5

STYLE PLUS

Christie Matthews, 5, of Trinity Temple School, and Wenonah Logan, 73, a Children's Museum volunteer.

GRAY POWER: Making Friends

By Carol Krucoff

"What's it like to have wrinkles?" "Do your teeth fall out one at a time or all together?" "Can old people play poker?"

The questions were thoughtful, tough and personal, but the fourth graders from J. O. Wilson School in Northeast had been encouraged to ask 71-year-old Delma Dockett whatever they wanted about "what it's like to be old."

Dockett, a senior volunteer at the Capital Children's Museum participating in their "Another Birthday" program, offered these answers:

"Wrinkles don't hurt, they're soft . . . If you take good care of your teeth they don't have to fall out at all . . . Some old people play poker, some play other card games and some play games like checkers or chess."

This intergenerational interchange is part of the museum's "generation-gap-closing program." About 50 senior citizen volunteers help children learn from the museum by helping them use the "touch-it, work-it-yourself" exhibits and by participating in special programs like "Another Birthday."

Bringing together elders and youngsters "is a dream come true," museum director Ann Lewin told nearly 100 senior citizen volunteers and activists at last week's program celebrating Older Americans Month.

"In Sweden old people's homes are placed next door to day-care centers. We need to do things like that in this country because old people and young people have a great deal to offer each other.

"This museum is a place where all segments of society—old, young, rich, poor—can come together, learn and have fun."

Said Dr. Robert Butler, director of the National Institute on Aging: "It's a marvelous way to build an understanding of the life cycle as a whole and combat ageism, by presenting to children the positive, lively and remarkable aspects of old age."

In keeping with the museum's "hands-on" philosophy, each child who visited the exhibits that morning received a copy of "A Treasure Hunt," an NIA-commissioned book depicting young people discovering and getting to know older people in their community.

"Children's books frequently depict old people as mean, cantankerous folks who aren't interested in children," said Butler. "Children who grow up with this negative stereotype are learning ageism. Hopefully, books like this will change that."

"In our culture, children probably think being old means degenerating," said senior volunteer Wenonah Logan, 73. "Unless they have grandparents they think old people are just feeble, grumpy souls who don't see very well and are always looking for their glasses.

"But we show them how old people have lots of interests—clothes, theater, the ballet. We want to give them the opportunity to get to know us."

"There are lots of fun things about being old," said Delma Dockett to her group of fourth graders.

They came up with two: "having time to sit on the porch and talk to neighbors" and "not having to go to work or to school."

Dockett, who often surprises youthful charges with her agility, said "One child wanted to know if I disco danced. I said I knew how to rock and showed them how to rock down to the ground.

"They looked at me with open mouths and then joined in. One boy wanted to learn another dance so I showed him the waltz. We had a great time."

Volunteer Estella Frye has found that "children like you because you smile when they smile. It doesn't take a lot to make a child happy. Just being with them and laughing together is enough."

Gray Panther Gustina Gobson, 79, summed up the affinity between senior and junior citizens: "We have the back ideas and they have the front ideas, so we understand each other very well."

• The Capital Children's Museum, at 800 3rd St. NE, is open to the public Tuesdays through Fridays from 10 a.m. to 4:30 p.m., Saturdays from 11 a.m. to 4:30 p.m. and Sundays from 1 to 4:30 p.m. Admission is 50 cents per child and $1.50 per adult.

For information on group visits, special programs, membership, college internships and volunteering, call 544-2366.

• Single copies of "A Treasure Hunt," a 32-page storybook about relationships between children and the elderly, may be requested free from the National Institute on Aging, Room 5C36, Building 31, NIH, Bethesda, Md. 20205.

THE BEST MICRO-COMPUTER SOFTWARE OF THE YEAR

THE LEARNING COMPUTER SOFTWARE AWARDS

Presented by the LEARNING PERIODICALS GROUP:
LEARNING
CURRICULUM PRODUCT REVIEW
EDUCATIONAL DEALER

Awarded to

Reston Publishing Company

For

Paint

PRODUCED BY CAPITAL CHILDREN'S MUSEUM
Washington, D.C.

All entries in this annual evaluation were judged by teachers, subject specialists, computer educators and instructional media developers.

1 9 8 2

Publisher

Washingtonian of the Year 1979

Ann Lewin

Four years ago, she realized that "in this city of museums and galleries, there was no museum that celebrated our children," and so took charge of an effort that culminated in the National Capital Children's Museum. For years she beat a path from foundation to agency to benefactor in order to find both funds and space. There were few successes until DC School Superintendent Vincent Reed offered the second floor of the Lovejoy School in Northeast. "I was impressed, not just with the idea, but with Ann's sensitivity and dedication — almost an obsession—to the project," recalls Reed. Eventually came the turning point: a $1.7 million HUD grant to buy a large home behind Union Station at Third and H streets, Northeast. Today, that structure houses dozens of rooms of "hands-on" exhibits and learning games that Washington children—and adults—are discovering. Such treasures would not exist without Ann Lewin's persistence and devotion, and for these, she is a Washingtonian of the Year.

NAESP

National Association of
Elementary School Principals

March 7, 1983

Mr. Bob Evans
Education Department
Capital Children's Museum
800 3rd St., N.E.
Washington, D.C. 20013

Dear Bob,

Once again, thank you for the excellent job you and your staff did for our principals. Everyone connected with the museum staff was so pleasant and helpful . . . but most of all, knowledgeable!

The principals evaluations rated the institute effective and the "hands-on" part as excellent. The museum itself received very favorable comments.

Thank you for your personal courtesy in joining our group on Friday evening, too, Bob.

Sincerely yours,

Margie

Margie W. Thompson
Professional Development Specialist

MWT/cd

1920 Association Drive, Reston, Virginia 22091 (703) 620-6100

Fred Meyer Charitable Trust 1515 S.W. Fifth Avenue, Suite 500, Portland, Oregon 97201, (503) 228-5512

March 31, 1983

Candace Sullivan
Robin Beaman
Capital Children's Museum
800 Third Street N.E.
Washington, D.C. 20002

Dear Robin and Candace:

Thank you again for the time you took to give me a splendid introduction to the Capital Children's Museum. As you know, the Fred Meyer Charitable Trust is attempting to address the issues of equity and technological literacy, and your programs are fine examples of the kinds of things we hope to bring about.

I have placed the materials you provided into some eager hands -- those of two far-sighted inner city school principals whose school populations are comparable to the kids eligible for your MET program. We hope also to involve the Oregon Museum of Science and Industry in this effort, and your strong example will be very helpful in raising access and equity issues for an institution geographically and psychologically at some remove from economically disadvantaged kids.

Please give my thanks also to Ann Lewin, whom I have yet to meet, but whose reputation is larger than life!

And do expect some follow-up calls from us as we develop the project. You've been enormously helpful and we'll be pleased to achieve a fraction of your accomplishments. Perhaps we can look forward eventually to some joint efforts.

Sincerely,

Kathleen G. Bowman

Kathleen G. Bowman
Program Officer

/dt

Trustees: Travis Cross, Pauline Lawrence, Warne Nunn, G. Gerald Pratt, Oran B. Roberson **Executive Director:** Charles S. Works

Burgess Lee Berlin, M.D., P.A.
ORTHOPAEDIC SURGEON
18 PROSPECT STREET
SOUTH ORANGE, NEW JERSEY 07079
TELEPHONE (201) 761-7755

MAR 28

March 21, 1983

Mrs. Ann Lewis
Director
Capitol Children's Museum
800 Third Street, N.E.
Washington, D.C. 20003

Dear Mrs. Lewis:

Recently, my husband and I took our two sons on a vacation to Washington, D.C. They are 10 and 8 years of age, and both are considered "gifted." On the recommendation of one of their teachers, we decided to visit the Capitol Children's Museum, and am I glad we did! It was the highlight of our entire trip.

Although the other attractions and museums interested them as spectators, they both became totally involved in the exhibits your museum featured. The concept of having the children actually do things themselves is really wonderful and was very exciting to them and to us. (You may even give museums a good name!). When the announcement came over the P.A. system that the museum was closing for the day, most of the children had to be pried from the machines they were working on and physically removed from the premises. We could only convince our children to leave on the condition that we would return again the next day, which we did.

My only concern is that most people I've spoken with are not aware of your museum and, if they have heard of it, they're under the impression that it's for very young children. Were it not for Mrs. Nathanson recommending it so highly, we would have given up on it, too, because we found it difficult to get directions. I hope that, the next time the budget allotment is being calculated, the government will provide you with more funds so that this most worthy of attractions can be given the publicity it so deserves!

Many thanks for a wonderful learning experience.

Sincerely yours,

(Mrs.) Susan Berlin
and Family

cc: Mrs. Joy Nathanson
Hazel Avenue School
West Orange, N.J. 07052

The National Learning Center

Capital Children's Museum

Learning Opportunity Center

Three acres and substantial buildings house The National Learning Center.

Junior High School students use a computer simulation to launch a satellite into orbit in the COMMUNICATION exhibit. The program was written by SuperBoots™ Software, an arm of The National Learning Center.

A MUSEUM BY ANY OTHER NAME

by Ann White Lewin, *Executive Director*

At Capital Children's Museum (CCM), visitors frequently exclaim "This isn't a museum!" The ancient concept of a museum was a place for study and participation in a wide range of fields. The ancient museum was more like today's universities and was closer to the spirit of a learning center than today's museums. Thus CCM has been reorganized as The National Learning Center. The National Learning Center has two operating entities: Capital Children's Museum and a new school, Learning Opportunity Center.

What is the spirit? It is an atmosphere in which one's intellect is respected, where no one is stupid, where the different rhythm with which each person learns is appreciated. It is a place where the only rule is to respect others' right to follow their own interests at their own pace. The National Learning Center is a place where you use time to follow your fancy until your curiosity is satisfied, whether that be for a moment, a day, or more.

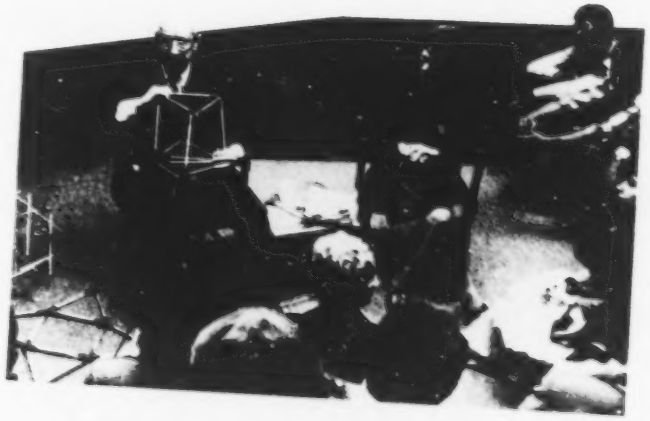
What do you do at The National Learning Center? If you come with a school group or as a visitor, you explore space: you walk into "exhibits" that have no plexiglass walls, where the brooms are to sweep, the clothes to wear, the pots to cook, the rugs to weave, the food to taste, and Rosie, the live, white, fat goat, is to pet. You crawl through a sewer, hoist 50 pound blocks with pulleys, "paint" with a computer, explore an eerie ice age cave, type with a braillewriter, walk through the lens of a giant camera, visit a pre-Columbian burial site, print on a Gutenberg press, talk via model satellite receiving and transmitting dishes, experiment with lenses to see what a hawk sees, weigh yourself in kilograms, and link up electronically with others via CompuServe, tomorrow's electronic newspaper, shopping guide, and bulletin board, and . . . the possibilities seem endless. One parent recently said that he comes at least twelve times a year. Another parent said she would not have believed anything (and least of all a museum) could compete successfully with Saturday morning TV. If you enroll in the Learning Opportunity Center, you participate in a full academic program which can lead to the GED, a nationally accepted equivalent of a high school diploma. You test yourself to pinpoint a program of study tailored to *your* academic strengths and weaknesses. You use a wide ranging curriculum to meet your own academic goals. You enroll for the length of time *you* need to achieve your own learning objectives.

What is the Museum? It is a place with 200 volunteers, many over age 60, some under age 14, others from colleges and universities as far away as California and The Netherlands. It is a place where handicapped persons find no barriers, where parents learn alongside their children, and where children only cry when it's time to leave. CCM is a wholesome alternative to violence on TV, to hanging out on the streets, to the consumer orientation of shopping malls, and to other mindless pastimes which divert today's youth.

What is the Learning Opportunity Center? It is an experiment in a 21st century form of school where you manage your own instructional program with assistance from the latest techniques in computer networking. It is an academic center designed to motivate students, some for whom traditional education has not worked, others for whom self-paced studies work best.

The National Learning Center is a place for life-long learning, a plethora of ideas for educators, formal training programs for teachers, credit-granting courses for grad students in education, non-profit management, educational technology, cultural anthropology, the history of communication, and more. It is a new form of education that challenges you to imagine, to inquire, and to discover, with your feelings alive, your mind engaged, your sense of wonder renewed, and your own objectives the basis for learning.

Secretary of Education Terrel Bell visits a class in FUTURE CENTER, the computer classroom, where teachers learn to program with their classes.



Dr. R. Buckminster Fuller became a guest instructor on a December 16, 1982 visit to the Museum.

AN EXPERIMENT IN EDUCATION

The National Learning Center was founded as an experiment in education. Many people fear the word experiment, especially where children are concerned. But it is time for a new form of education, a form that will prepare children for the twenty-first century.

We are approaching a century in which the world faces crises as never before—the threat of nuclear holocaust, vastly increased populations, mass illiteracy, depletion of vital resources, and the breakdown of social systems. It is of the utmost urgency that we educate our children and young people so they can find solutions for these problems and can meet the challenges of the future. Yet today, American students are not measuring up when compared to those of most other industrialized nations. Reliable surveys show that, in science especially, our young people score far below the Japanese, the Russians, and many Europeans.

The National Learning Center has two components—Capital Children's Museum and Learning Opportunity Center. They serve as models for many experiments in education organized into these main areas of activity:

- Research and development of innovative approaches to experiential learning and education, particularly in the areas of math, science, and the new technologies.

- Training for teachers and educators. The National Science Foundation, the National Endowment for the Humanities, the Department of Labor, The Ford Foundation, and other private sources have funded numerous training programs to help a broad range of educators and parents learn new methods of instruction.

- Dissemination and distribution including lectures, pioneer efforts with computers and teleconferencing, development of educational software, publication of curricula, articles, and other written material. To date people from 29 countries and 41 states have received formal technical assistance. Hundreds more have adopted programs and activities created here.

Our overriding concern is that today's youth grow up believing that each person can make a difference, that each mind is an important resource, and that the very survival of this planet will in fact be determined by the actions of every single individual. The sense of individual initiative and impact is, we believe, the foundation on which to insure that the world will survive beyond the twenty-first century for the generations of children who follow.

40-458 0 - 85 - 8

Mrs. Suzuki, wife of the Prime Minister of Japan, is among many prominent visitors brought by the U.S. Department of State on official visits.

A senior volunteer and a young visitor share a moment of delight in SIMPLE MACHINES.

Hearing-impaired students learn by observing and using a printing press in COMMUNICATION.

WHO USES THE NATIONAL LEARNING CENTER?

- Over 250,000 visitors came in 1983, and this number is growing. Children, teenagers, adults—from the Washington area, from all over the United States, and from all over the world
- Schools and youth organizations
- Teachers, educators and officials from governments and institutions who wish to replicate our methods and programs in schools and museums
- Public officials and administrators who work in the area of employment training and who use the LOC as a model
- Children and young people from economically disadvantaged backgrounds who attend free programs to update their knowledge and prepare themselves to cope with the challenges of a world becoming more technological
- Children and teenagers who are gifted, who come to learn at their own speed
- Handicapped persons with special physical, mental, and/or emotional needs
- Senior citizens who work as active volunteers, sharing a lifetime of experience with future generations, and demonstrating that young and old can both learn from each other and learn together

INTERNATIONAL HALL
Become an artisan.

Film and Photo — COMMUNICATION
Explore the effect of light and magnification.

Code Hall — COMMUNICATION
Send a message in code.

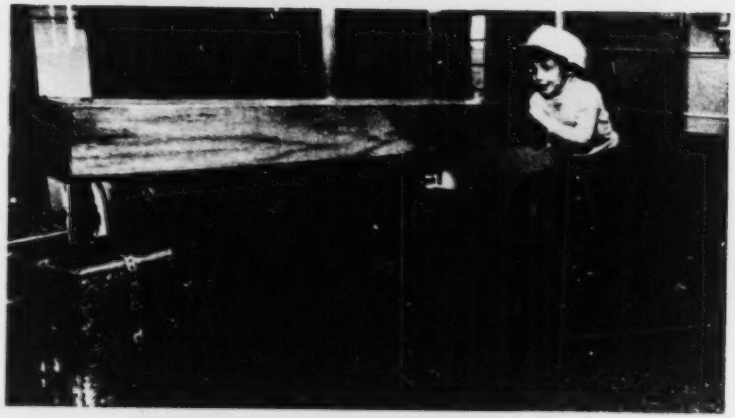
EXHIBITS

COMMUNICATION

A 12,000 square foot exhibit focusing on the quest to convey ideas, messages, and information from person to person across time and space. The exhibit incorporates hands-on experience with information storage and transmission devices from the ice age through the modern age. The exhibit is distinguished by its recreated environments: an ice age cave with reproductions of paintings by early man; two rooms devoted to the development of print media; and radio and video production centers, telephone, computer exhibits and more. COMMUNICATION is listed in the EPCOT Center's brochure *Communications* as one of the largest communications exhibits in the world.

INTERNATIONAL HALL
Mexico

A social studies text book come to life with log and straw houses, an archaeological site and an open air market to explore, traditional Mexican clothes to wear, tortillas to cook, chocolate to make, native crafts to learn, a goat to pet, and an exact replica of a Mexican "Miscelanea" in which to shop.



Learn basic mechanics in SIMPLE MACHINES.

Create a gear system in SIMPLE MACHINES.

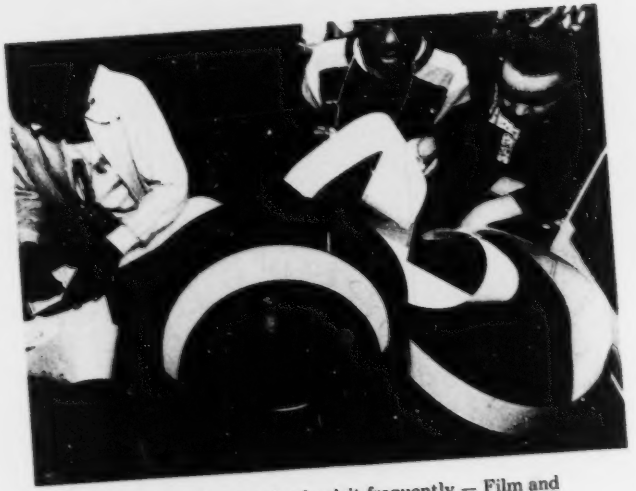
Explore your environment in THE CITY ROOM.

CHANGING ENVIRONMENTS

The City Room	Presents the city to children by allowing them to crawl down a manhole and explore what lies under a city street; hang on a telephone pole by a line operator's belt; dress as a fire fighter or police officer; work street lights and fire alarms; and play the roles of the many people who are essential to keeping a complex city functioning.
Simple Machines	Allows children to use pulleys and levers to increase their power, to use gears, screws, and other machines and to take apart old typewriters and in the process discover basic mechanical principles.
Patterns and Shapes	Gives children concrete experience with two and three dimensional geometric shapes in a carefully selected array of colorful puzzles, sequencing games and other materials that teach basic concepts.
The Living Room	Offers a wealth of materials and activities to stimulate creativity. Children use fish nets, lights, plastic tubes, oddly shaped blocks and foam rubber to experiment with shapes and space and to transform the room into an exhibit which is different each time they use it.
Metricville	Helps children learn the principles of metric size and measurement by using meters and grams in real life situations. Includes the popular computer game Centimeter Eater which teaches children to estimate length in centimeters.
The Factory	Provides a view into the early twentieth century mass production of clothing in a miniature, animated factory.
The Gallery	Displays a continually changing array of art for and by children.

A large part of the Adult Volunteer program is devoted to working with senior citizens — MEXICO.

The MET-Kids visit Mayor Marion Barry in his office.



Students from Region D schools visit frequently — Film and Photo, COMMUNICATION exhibit.

COMMUNITY PROGRAMS

MET-KIDS

Museum Enrichment Training for Kids: the Museum's afterschool and weekend enrichment program for children in neighboring elementary and junior high schools offers literacy and recreational activities, computer training, and comprehensive art activities.

Free School Visits

The Museum encourages the neighborhood public schools (Region D) to bring classes for scheduled visits at no charge. Those schools within walking distance make regular use of this opportunity.

Volunteer Program

The Museum's adult volunteer program provides training programs by the Museum's education staff. Weekend workshops include training in child development and in the special needs of handicapped visitors. A large part of this program is devoted to recruiting senior citizens for our nationally recognized and highly praised model intergenerational program.

Atari Summer Camp

Community Day Parade

Outer Spaces — summer program on the grounds

SPECIAL PROJECTS AND EVENTS

Computer Camp

The Museum has sponsored several summer day camps, some in conjunction with Atari/Warner Communications, who underwrite full tuition for students from the D.C. Public Schools.

Community Day

One day each year, the Museum organizes a parade to travel through Capitol Hill. Museum exhibits are open free of charge to the public and the grounds become a neighborhood carnival for children and their families. Special activities and workshops are provided and performing artists give free performances.

Christmas Party

A special party, after Museum hours, for 100 underprivileged children. The exhibits are open, refreshments are served, and each child receives a gift donated by a major toy company.

Special Exhibits

Throughout the year CCM features special interactive exhibits. In 1983, "What About Aging" simulated the sensory changes experienced by healthy individuals in their seventies and eighties; "Someone Like Me" explored the problem of hunger and poverty in the Third World; "Young Expressions" showed instant photos taken by young people and also demonstrated how instant photos are made. An artist in residence, Skip LaPlante, gave workshops on creating and playing home-made instruments, and with the help of staff and children created a Musical Waterfall outside the Museum's entrance.

Teacher training programs held at The National Learning Center have included many workshops to improve science education in the elementary schools.

Teachers send us pictures showing how they use in their classrooms what they learn in National Learning Center training programs.

A high school intern demonstrates the loom for visitors to the MEXICO exhibit.

TRAINING PROGRAMS

Adult Computer Classes	In conjunction with Logan Adult Education Center, The National Learning Center offers computer programming courses at a greatly reduced rate for the Center's students. Under contract with the U.S. Department of Agriculture Graduate School, we offer extensive beginning programming courses.
FUTURE CENTER Computer Courses	The FUTURE CENTER computer classroom offers a full range of classes including programming in LOGO, BASIC, or Pilot for adults and children, CompuTots (ages 3 and 4) and CompuTutor (ages 5 to 7), computer literacy, art through computers, and special applications.
Internship Program	High school and college students work in the Museum and receive school credit for their work. Interns include a large number of students enrolled in museum education programs—some from colleges as far away as The Netherlands.
Public School Staff Development Workshops	The Museum provides in-service workshops for teachers from the D.C. Public Schools, Montgomery County, and Fairfax County. The subject matter for these workshops has ranged from computer literacy to using Museum exhibits to teach art, science, social studies, and history.
Computers in Special Education	The National Learning Center in conjunction with Trinity College, offers a 9 credit certificate program for regular and special education personnel. This course prepares teachers to use computers effectively in special education and emphasizes "hands-on" computer experience targeted to class members' interests and needs. The course is funded with a grant from the U.S. Department of Education as a three year project.

LOC
Learning Opportunity
Center

LEARNING OPPORTUNITY CENTER

The Learning Opportunity Center is one of three Ford Foundation national demonstration sites which train youth so that they are able to get and hold jobs. It is located in the East Wing of the complex, in a space designed to support a self-paced, individualized curriculum.

The training is based on a curriculum developed by Dr. Robert Taggart, President of the Remediation and Training Institute. It integrates all media—pencil and paper, books, workbooks, AV and computer and draws heavily on the Museum's leadership in the field of computer education and on its experience in running innovative educational programs.

The academic program leads to the GED, and vocational and job placement are tied to skills which are in demand in Metropolitan Washington, D.C.

The LOC has received a major two-year grant from The Ford Foundation and is seeking additional funds from a combination of public and private sources. The facility is configured for several kinds of educational programs including SAT preparation, remedial education, courses to enrich the regular school curriculum, basic academic skills, and job training. In this way, The National Learning Center will make maximum use of the superb facilities at the LOC.

Rosalyn Carter releases a ceremonial balloon to declare the Museum officially open -- February 13, 1979

Mrs. Menachim Begin and Madam Anwar Sadat have been among many international dignitaries who have made official visits to CCM -- March 1979

Rand Araskog, Chairman, Chief Executive and President of ITT at opening of the COMMUNICATION exhibit -- November 1981

MILESTONES

1974 The Museum was incorporated as a nonprofit institution in the District of Columbia.

1975 The Eugene and Agnes Meyer Foundation donated the first "seed money."

1976 The D.C. Department of Education donated four rooms at Lovejoy Elementary School for a pilot program.

1977 The Museum attracted thousands of visitors and became an instant "hit" with children of all ages.

1978 By the end of the year the Museum had served over 50,000 visitors and had turned away 20,000 more for lack of space.

With unanimous backing from the City Council, the Mayor, and the D.C. Department of Housing, the Museum applied for and was awarded a grant of $1.7 million by the U.S. Department of Housing and Urban Development for the purpose of purchasing the buildings and grounds formerly occupied by the Little Sisters of the Poor at Third and H Streets, N.E. HUD challenged the Museum to match $1 million of this grant within 19 months.

1979 MEXICO, the first country in the INTERNATIONAL HALL, opened as the first exhibit at the new site. It was installed with in-kind support from the Organization of American States, local trade unions, businesses and individuals, and an unprecendented cash grant from the Government of Mexico.

The HUD challenge grant was matched and the Museum officially opened in the new building on February 13, with ceremonies led by First Lady Rosalyn Carter and D.C. Mayor Marion Barry.

1980 Over 70,000 visitors attended the new facility during the first year of operations.

1981 FUTURE CENTER, the first segment of a major exhibit on Communications, opened with in-kind donations from Atari, Inc. of 30 computers.

The permanent exhibit COMMUNICATION, made possible by a substantial contribution from Interanational Telephone and Telegraph, opened in November.

THE WASHINGTON POST
Thursday, December 18, 1980
Community Projects
Win National Awards
READERS PICK THE BEST
SCIENCE 82
The New York Times
TRAVEL
A Capital Museum
That Invites Kids
To Participate

MILESTONES

1982

The Museum was voted top indoor attraction for children by the *Washingtonian* Magazine and listed by *The Washington Post* as one of the top sight-seeing attractions of the city. EPCOT Center cited COMMUNICATION as first among four places to visit to learn about communications.

The Museum published PAINT, an educational book with software to enable students to create "paintings" on the computer. PAINT was presented a "Best Microcomputer Software of the Year" award by the Learning Periodicals Group.

Enrollment in the summer MET-Kids program reached a high of 388 neighborhood children who came free of charge for new learning experiences.

Friends of the Museum, a committee dedicated to help raise funds for CCM, staged a fashion show benefit featuring VIP models that raised $50,000.

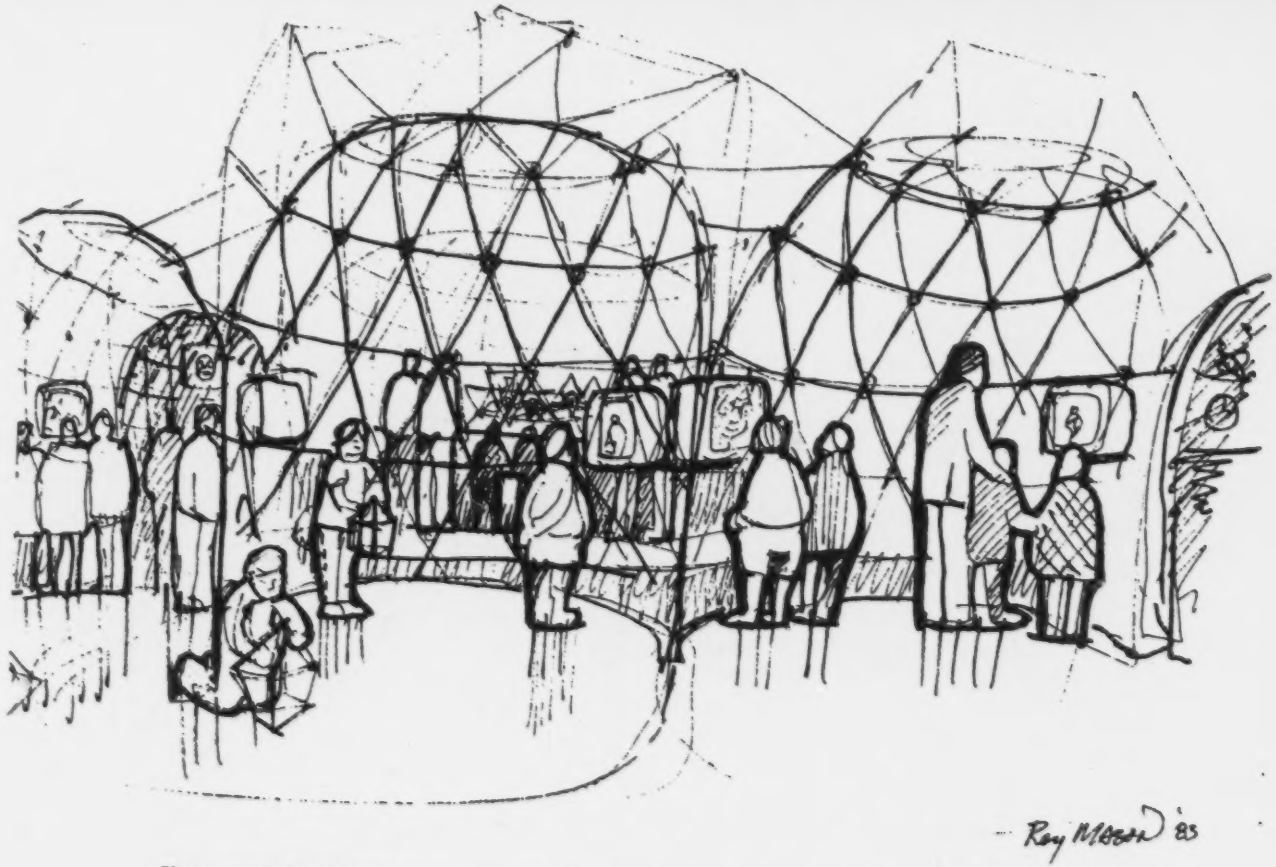
1983

Dr. R. Buckminster Fuller chose the Museum as an institution ideally suited to create the exhibit "Scenario Universe" which synthesizes his ideas on how "the children of our planet can learn what they need to know and to do to make the world work successfully for all its human passengers."

The Ford Foundation and The Edward W. Hazen Foundation gave grants to establish the Learning Opportunity Center (LOC). LOC is one of three Ford Foundation national demonstration sites using a new training approach suitable for many different student populations.

The Museum received a $500,000 challenge grant to establish a $2 million endowment fund.

The Museum also received a $300,000 NEH challenge grant to be matched 3 to 1 to increase its financial stability.



Plans are on the drawing boards for new major exhibits including "Scenario Universe," conceived by Buckminster Fuller for Capital Children's Museum.

PLANS FOR THE IMMEDIATE FUTURE

ENERGY

A new permanent exhibit will evolve from solutions to a problem. The problem: how to make a hundred year old building energy efficient. The solution: improvements in the heating system, better insulation, use of solar energy. The exhibit will "peel the skin off the building" to make people aware of the energy systems that surround them. ENERGY will open up the ordinarily "hidden areas" of the building (boiler rooms, pipes) to visitors who will be able to trace the lines that flow through every area. Thus, the ENERGY exhibit will be interlaced throughout the other exhibits; it will enhance the themes of every exhibit, and it will itself require little additional space or operating costs.

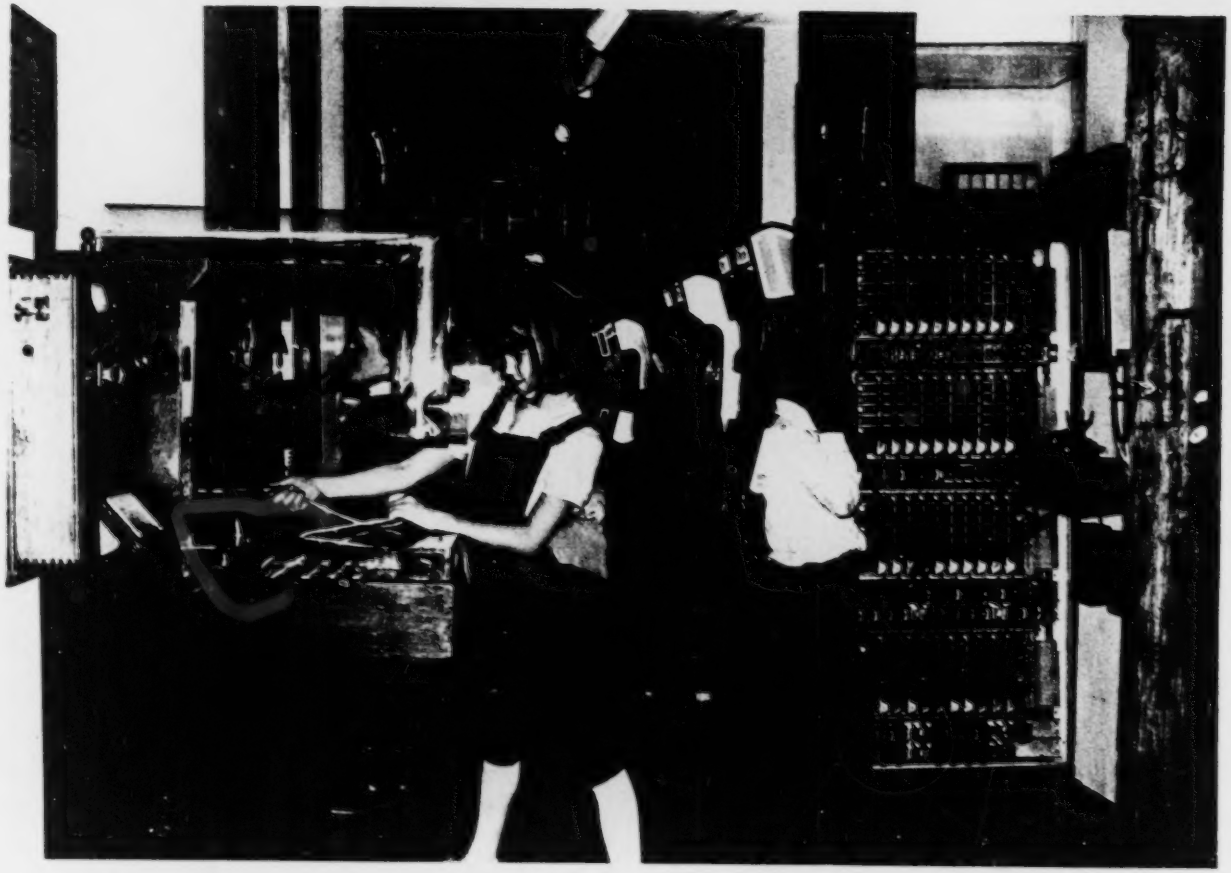
SCENARIO UNIVERSE

Addresses the major challenge humanity faces: how to "make it" economically in the decades ahead. The exhibit was planned with the help of Dr. R. Buckminster Fuller and is based on his powerful concept that we have enough resources to provide everyone on the planet with the means to subsist well. SCENARIO UNIVERSE will consist of a geodesic dome constructed in the garden and housing fully participatory exhibits consisting of models and interactive videodisc and computer games.

THE LEARNING GARDEN

Will make the Museum's outdoor environment as innovative as its indoor exhibits. The conceptual plan was funded by a grant from the National Endowment for the Arts. Surrounding the geodesic dome will be outdoor exhibits that combine educational purpose with physical challenge and aesthetics. The Geometry Garden, for example, will be an outdoor environment of large geometric forms which will capture the imagination and teach the relationships between three-dimensional forms.

We are actively seeking funding for these projects. Additional information is available.



Visitors learn how much telephone technology has advanced in the Telephone Exhibit -- COMMUNICATION

PROFILE OF INCOME
(Fiscal Years 1981 to 1983)

	1980/81		1981/82		1982/83	
SELF-GENERATED						
Admissions	66,431		190,204		288,381	
Royalties	0		39,152		53,325	
Space Rental	102,683		280,792		291,109	
Gift Shop, Membership, etc.	85,106		86,270		107,914	
Subtotal	254,220	(22%)	596,418	(30%)	740,729	(45%)
PUBLIC/PRIVATE SECTOR						
Government Grants	285,990		151,898		41,330	
Foundations, Corporations, Individuals	333,275		529,007		747,327	
Fundraising Events	143,184		102,967		98,467	
Contributed Services & Materials	151,755		644,732		36,151	
Subtotal	914,204	(78%)	1,428,604	(70%)	923,275	(55%)
TOTAL	1,168,424		2,025,022		1,664,004	
CAPITAL CONTRIBUTIONS						
Building Purchase	455,311					
Building Maintenance					25,000	
Exhibit Installation			413,857		*	
	$1,623,735		$2,438,879		$1,689,004	

* Two new exhibits were donated and built *in toto* by John Dimick and Eye Care, Inc. They are not included in the audited budget.

A family uses COMPU-Serve, an electronic newspaper, bulletin board and information service, in the Hall of Information — COMMUNICATION exhibit.

PROFILE OF EXPENSES

(Fiscal Years 1981 to 1983)

	1980/81	1981/82	1982/83
Salaries and Employee Benefits	$280,282	$615,314	$763,079
Utilities and Maintenance	83,339	166,018	173,981
Exhibits	33,058	45,748	*
Cost of Goods Sold	11,196	26,553	36,987
General Office Expense	148,068	213,326	126,885
Consultants	123,648	84,375	86,350
Interest	46,904	41,583	33,236
Exhibits and Special Events	113,441	53,658	23,959
Depreciation	68,860	73,001	201,945
Miscellaneous	13,609	9,071	17,142
Costs Allocated to Restricted Funds	405,324	741,514	431,495
	$1,327,729	$2,070,161	$1,895,059
Capital Additions	460,737	597,662	25,000
	$1,788,466	$2,667,823	$1,920,059

* Two new exhibits were donated and built *in toto* by John Dimick and Eye Care, Inc. They are not included in the audited budget.

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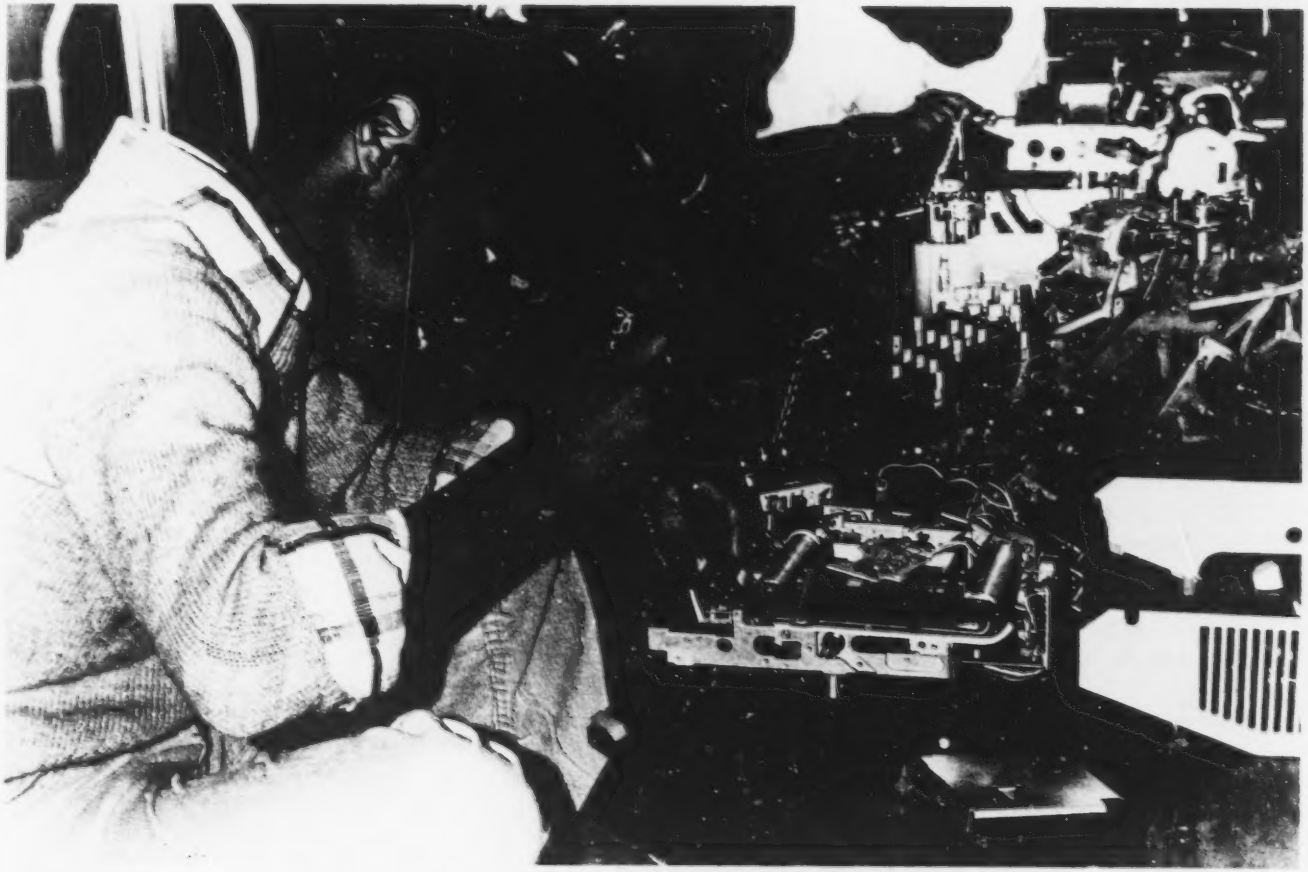

Youth look for mechanical parts inside common machines -- SIMPLE MACHINES exhibit.

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The National Learning Center is the umbrella organization for the Capital Children's Museum, the Learning Opportunity Center, and other educational/cultural endeavors. It is an independent, private, non-profit organization. For funding, it depends entirely on corporate donations and government and foundation grants. The public supports The National Learning Center through membership, gifts in cash and in-kind, participation in fund-raising events, purchase of tickets to events run by the Friends of the Capital Children's Museum, a required contribution at the door, and wide ranging volunteer efforts.

CCM has received a $300,000 challenge grant from the National Endowment for the Humanities. This grant must be matched three to one. All donations, contributions, and earned income exceeding amounts received during the 1982 fiscal year will count toward the match, as will all new donations.

This booklet was made possible through the generosity of
The Freed Foundation

800 Third Street, NE
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543-8600

Quality education in a non-assuming, non-competitive environment

The Learning Opportunity Center

- **focuses on realistic goals and values**
- **shapes positive attitudes and behavior**
- **increases self-esteem**
- **makes students productive**

Students who feel successful are motivated to complete assignments and to achieve their goals.

Curriculum

The curriculum includes materials from the basic skills level to the college preparatory level. There are two components—academic and functional.

The academic component covers reading and writing, mathematics, intermediate and advanced high school science, social studies, and literature. It parallels the basic skills covered by most primary and secondary schools.

The functional skills component covers occupation-related skills such as reading want ads and completing job applications, knowledge of community resources, accessing public transportation, health issues such as nutrition and the dangers of alcohol and drug abuse.

Curricular materials have been gathered from more than 60 different publishers and tailored for the LOC's unique combination of computer-based and individualized instruction. The best books, computer lessons, and audio-visual materials have been chosen. The curriculum, called the Comprehensive Competencies Program (CCP), is based on a decade of research conducted in training sites throughout the nation. It is the work of Robert Taggart, President of the Remediation and Training Institute and former head of Youth Employment Training Programs, U.S. Department of Labor.

Funders

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Learning Opportunity Center
has been provided by
THE FORD FOUNDATION

The instructional program
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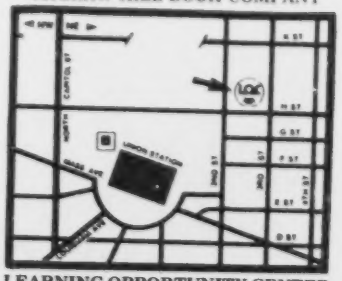

LEARNING OPPORTUNITY CENTER
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For information or application call
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LEARNING OPPORTUNITY CENTER

Learning Opportunity Center

a school where you unlock your future

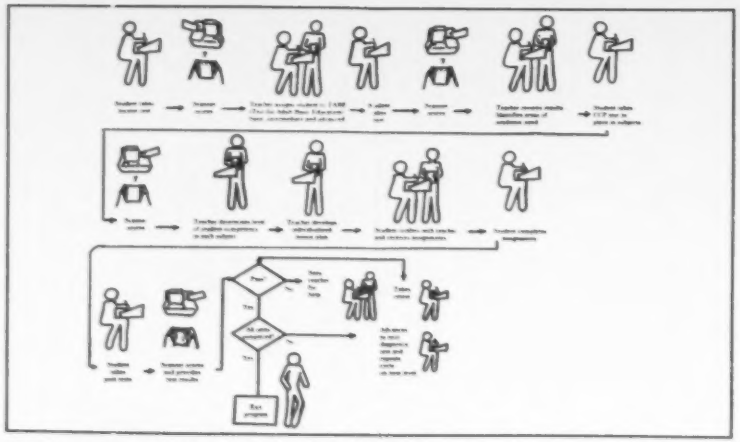
A program of
The National Learning Center

The Learning Opportunity Center is a school that is designed to improve the academic and functional skills of students to prepare them for employment.

The program is

1. Individualized—assignments and instruction address each student's particular needs
2. Self-paced—students progress through lessons at their own pace
3. Computer-assisted—one-third of the assignments are on computer
4. Written—two-thirds of the assignments are in books and require written answers
5. Audio-visual—films and tapes expand the range of the lessons

Research shows that in an individualized, self-paced program with computer assisted instruction, students can advance from 1 to 1½ grade levels with only 90 hours (six weeks) of instruction.



On their own, students move through lessons that meet their specific needs and help them achieve their own goals.

Program

The program is revolutionary. In an interview, students are told the expectations: the school is their place of work. They will attend regularly, come on time, behave and dress appropriately, respect others, work hard.

On acceptance, students are tested to determine academic level. The first week's lesson plan is prepared by the teacher based on a student's skill as tested.

At orientation, students are trained to manage the environment—to find the particular lessons they will study from hundreds of books, to use the computer-based lessons, to take the tests following each lesson, to score and record their own test scores, to find supplementary lessons if test scores are below 80%, to computer print the next week's lessons if test scores are over 80%.

There are no classes, no bells, no classrooms, no assigned desks. If there are forty students present at one time, each will work on his or her own lessons no matter what any other student is doing. Students spend as much or as little time on any lesson as they need.

The atmosphere is like a library with open shelves, work tables, and small study rooms. No one interrupts students unless they themselves request help. Then, attention is given by one teacher to one student.

The school is designed to accommodate 120 students in morning, afternoon and evening sessions so that students who work can keep their jobs and still attend. Orientations for new students are held every two weeks. Students may stay in the program as long as needed to accomplish their goals.

The staff includes a Director with extensive experience with work-bound youth, intake counselors who help students identify their goals and work closely with them to monitor progress, and teachers and aides who are trained to provide individualized instruction.

Goals

All students are encouraged to attain the highest possible goal.

A student may:

- obtain the GED (equivalent to high school diploma)
- enter the military
- complete high school
- enter a vocational program
- secure employment

Whatever a student's goal may be, the Learning Opportunity Center is the right place to begin. The Center helps young people acquire skills that last a lifetime.

The educational preparation offered at the Learning Opportunity Center gives students the chance to succeed in the working world. They gain the basic skills and the self-confidence necessary to:

obtain
and keep a job
and move up in a job
and move from one job to the next

BECOME A MEMBER OF CAPITAL CHILDREN'S MUSEUM

Benefits

Unlimited **free admission** for members and their children for one full year.

CCM Newsletter four times a year. Learn about new exhibits and special happenings. The quarterly calendar gives you dates for activities, classes, workshops, lectures, and performances.

Colorful **bumper sticker** to identify you as a CCM supporter.

Invitations to **special events** such as The Best of Washington fabulous fashion show.

Member's discount at the Penny Exchange Gift Shop. Show your card to receive a 10% discount on purchases. The Museum takes pride in its careful selection of the highest quality educational materials at the lowest possible prices. The Penny Exchange is rated "best for children" by the *Washington Post*.

Celebrations like birthdays and weddings with the whole Museum for your pleasure, or FUTURE CENTER, the computer classroom. Call the Membership Secretary for information, 543-8600.

Send in your membership application TODAY!

_____ Family $30
All benefits for a pair of parents or grandparents and children.

_____ Individual $20
All benefits for a teacher or adult interested in alternative learning for children.

_____ Youth/Senior $10
All benefits for individuals under 16 or over 60.

_____ Contributor $50
All benefits plus a gift membership for a youth or senior.

_____ Provider $100
All benefits plus a gift membership for a family.

(Please Print)

NAME _____

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Total Enclosed _____

Make checks payable to **Capital Children's Museum.** Mail to Membership Secretary, CCM, 800 Third Street, NE, Washington, DC 20002

GENERAL INFORMATION

Hours

Tuesday-Saturday 10:00 am-4:00 pm
Sunday 1:00 pm-5:00 pm

Closed Mondays, Thanksgiving, Christmas, New Year's Day and Easter.

Admission

$2.00 per person
$1.00 senior citizens

Group Admissions & Reservations

Groups of 10 or more make reservations through the schedule, at (202) 543-8600. Only scheduled groups receive discount. Group admission is $1.50 per child; chaperones free.
Free bus parking available for groups.

Special Events & Performances

Regularly scheduled demonstrations, special exhibits, and workshops.
Weekend performances by professional and amateur groups specializing in children's theater.

FUTURE CENTER

A hands-on computer classroom with daily public programs. Group rates. Call for prices and current schedule.

Rental Space

Meeting, conference, and reception spaces. Birthday parties and weddings. Computer games or lessons. Call events coordinator, (202) 543-8600.

Penny Exchange

Fascinating toys, scientific tools, art supplies, learning games, books, and cards from around the world in the Penny Exchange Gift Shop.

The Capital Children's Museum is not government funded. It is supported only by admissions and contributions. All gifts are tax-deductible.

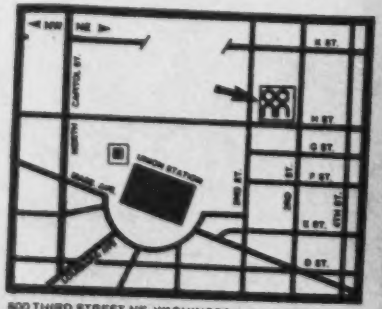
Write: **Capital Children's Museum**
Public Information
800 Third Street, NE
Washington, DC 20002
Call: **(202) 543-8600**

DIRECTIONS

Metro (Subway) & Buses
Take Metro Red Line to Union Station. Take escalators to top of building. Go through Metrobus parking lot to H Street overpass. Turn right down overpass. Museum is the large brick building across the street on the left.
Use Buses X2 and X4 to Third & H Street, NE.

Car
From Virginia take 14th Street Bridge to Southeast-Southwest Expressway. 395 North. Exit at Capitol/395 North (tunnel). Continue to end of tunnel and turn right at second light onto H Street, NW. At fourth signal turn left to Museum or right to park.
From Maryland and North take North Capitol Street toward US Capitol to H Street, turn left. Cross overpass to first light. Turn left to Museum or right to park.

Parking
Limited free parking on Museum grounds; $1.00 lot across street.



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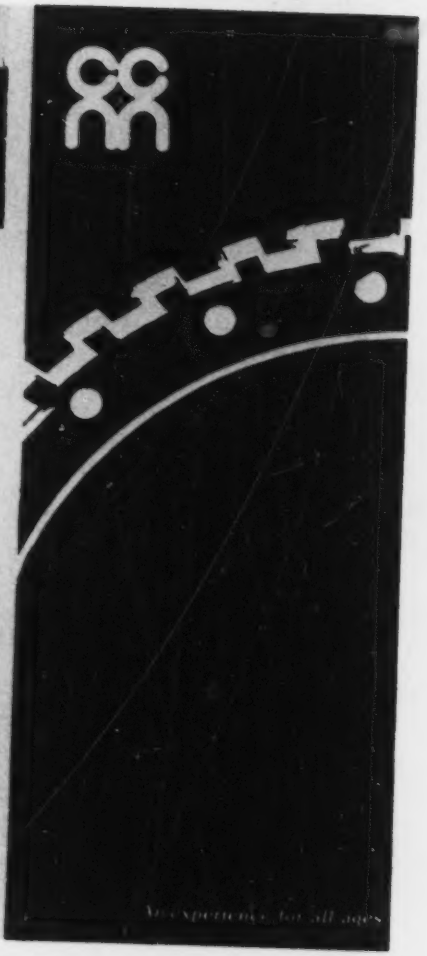
This booklet was made possible by the generosity of the Arnold and Marie Schwartz Fund for Education and Health Research



CAPITAL CHILDREN'S MUSEUM

CCM is an exciting experience for all ages. Large scale props stretch your senses and challenge your mind. Three major areas – International Hall, Changing Environments, and Communication – combine arts, sciences, humanities, and new technologies.

Paint with a computer...bake a tortilla... launch a satellite...crawl through a manhole ...print your own poster...ride a police motorcycle...read an electronic newspaper. ENJOY! You can fill an entire day, but even an hour's visit is worthwhile.

CCM "is a world of magic...as captivating to adults as to children." (*New York Times*, April, 1981). Each year a quarter million visitors of all ages touch, taste, test, try on and talk to our exhibits.

"The Capital Children's Museum is the best educational system I have ever experienced."
– R. Buckminster Fuller, in a letter dated March 29, 1983.

Meter Measuring Stick, Metroville (far left)
Working Ben Franklin Press, Print Shop (top)
One of 140 senior volunteers (middle)
Mrs. Menachim Begin and Madam Anwar Sadat have been among many international dignitaries who have enjoyed CCM (bottom)
Mexican Town Square, International Hall (above)
Telephone Hall, Communications Wing (below)

Morse Code Computer Game, Code Hall

40-458 0 - 85 - 10

Senator WALLOP. Thank you, Ms. Lewin. We will go on and complete the panel before I go to questions.

Director Lowry?

STATEMENT OF BATES LOWRY, DIRECTOR, NATIONAL BUILDING MUSEUM

Mr. LOWRY. Thank you, Mr. Chairman. The Museum is grateful for this chance to present its views, and with your permission, I will simply offer our written statement for the record and mention here some of the highlights that are contained in it.

Senator WALLOP. By all means.

Mr. LOWRY. In it we answer four questions—why a national building museum was created, how it is organized, what are its long-range plans, and why Federal seed money is critical at this time, and what the museum already has achieved.

To begin with, the most basic question, why a national building museum—although there are many great museums along the Mall that document and celebrate the arts and sciences of mankind, there really is not one that has as its special subject or concern the building arts despite the fact that the achievements in architecture and engineering are among America's great contributions to the advancement of civilization. The National Building Museum was intended to fill that gap.

It is also true that although there are many professional organizations, trade unions and special interest groups, representing the building industry of America, there is no single organization that provides a forum where all those parties can come together, and a national building museum provides that place.

Among all the formal and informal educational opportunities in our Nation, there are few that provide the general public with the chance to know more about their building heritage or how buildings are made that determine the nature of their own environment. The National Building Museum's programs are intended to give the public that opportunity.

How is the National Building Museum organized? The structure of the museum's governing body derives from the original enabling legislation, Public Law 96-515 of 1980, and that act itself was an affirmation and approval of the resolution set forth 2 years earlier that declared the Pension Building to be a national architectural treasure and suggested that its appropriate use would be as a museum for the building arts.

Congress directed that special feasibility studies be made to examine this proposition by the National Endowment for the Arts, the General Services Administration, and the Smithsonian Institution.

Conducted over the following 2 years, these investigations helped determine what was in the 1980 legislation. The Pension Building was made available without charge to the museum for that purpose. As you heard earlier, the Secretary of the Interior was authorized to provide a half a million dollars per year in matching funds for programs concerned with historical preservation, and the administration and direction of the museum was assigned to the private sector. It recognized that unlike a general arts or sciences

museum, a building museum has a special constituency, and that the building community should, therefore, help support its program, and it intended by placing the charge of the museum in the private sector to encourage that support, although at no time was it mentioned that that would be to the total exclusion of Federal funding, particularly in the initial stages of the museum's growth.

This legislation called for the private corporation to enter into a cooperative agreement with the two Federal agencies to carry out the terms of the act with, as it said, a minimum of Federal intrusion. Nevertheless, the governing board of the corporation includes as voting members 10 ex-officio directors representing pertinent bodies of the Federal Government. These directors or their appointed representatives attend all board meetings, receive all committee minutes and other mailings that go to all other members of the board. By this means the key members of the most appropriate agencies and congressional committees have been made a part of and kept informed of the activities of the museum.

The private members of the board which are elected for 3-year terms are chosen from across the Nation to represent five major segments of the building industry—professional design groups such as architects or city planners, manufacturers of building products and systems, financial interests represented by banks, insurance and development companies, builders and contractors, building craftsmen and trade unions. Thus the board of the museum clearly represents the partnership between the Federal Government and the private sector that was envisioned in the legislation.

What is the projected growth pattern of the museum? NBM has conducted intensive long-range studies dealing with program finance and national utilization, from which it has evolved an overall 10-year master plan. The first 4 years of that plan have been developed in great detail, and you will see attached to the back of this statement a financial spread that shows how that money will be used over the 4-year period.

As a result of this planning, NBM knows precisely what should be initiated at what moment, how much that will cost, and whether or not it will result in any return of revenue. It also knows how much money can be raised from the private sector during what timeframe and under what circumstances.

NBM has been told by its professional consultant that it can raise $15 million from the private sector to support programs over the next 4 years, but only if Federal commitment to NBM is continued. Therefore, Federal aid is needed now to move NBM off the launch pad. Federal aid now will enable the museum to stand on its own, financed primarily by the private sector, and the critical period for this seed money is during the next 4 years while the Pension Building is under renovation and the museum is able to mount only a kind of beach-head operation in that building as the galleries that are currently being created within the building will allow NBM to demonstrate how the building will operate as a museum, and it will allow for the first time the public in Washington to learn how much it will profit from NBM programs scheduled to open next April.

The inaugural exhibitions will show clearly what NBM is about. At the same time that NBM is making a reality of its home base, it

will be mounting an outreach program of exhibitions, publications, lectures, and films to be exported to communities across the entire country, for the NBM master plan does not intend for the museum simply to be a place for people to come to visit in the Nation's Capital.

How has the museum been able to function up to now and what has it achieved? During the almost 4 years since the enabling legislation came into effect, NBM has been supported primarily by contributions from the private sector, particularly from the building community. As you have heard, the Department of the Interior never made any appropriations for the matching funds contained in that legislation.

The private sector has accepted the challenge of joining with the Federal Government in support of this new institution. The financial support from the private sector alone would not have ensured, however, could not have supported all of the progress we have made over the past 4 years. We have come so far due to the sacrifices of a very devoted professional staff. I don't think any similar institution anywhere in this country could match our record of contributed staff time—more than one-quarter million dollars per year in addition to those pro bono services provided by accountants, auditors, and lawyers.

The interest and support of the building community and the devotion of the staff to the purpose and goals of NBM is what has made it possible for us to already be recognized as it was recently in "the New York Times" article before you as being a unique institution with great potential, and this judgment, like others, is based not simply on the idea of a museum or on its plans, but on the accomplishments of the last 4 years.

Although this is not the place to go into all of the activities since our inception, I would like to note just a few key accomplishments, particularly those that relate to the national significance of the institution.

Our award-winning quarterly publication is the only journal about the building environment written for the general public. It has attracted large readership, and it has spread information about the museum and the environment far afield. Subscribers come from every State in the Union as well as foreign countries such as New Zealand, Germany, Mexico, to mention a few.

An equally nationally significant program has been the traveling exhibition program. One exhibition, for example, dealing with trends in American architecture traveled to Houston, St. Louis, New Orleans, as well as being seen here in Washington. Another exhibit which celebrates the 50th anniversary of TVA has been seen by over 10,000 people this past month at the Mississippi River Museum in Memphis, TN. By the end of its tour it will have been seen in Kentucky, Texas, North Carolina, South Carolina, and Rhode Island.

We also have sponsored a nationwide competition for this country's schools of architecture on saving energy in historic buildings. Schools from such States as Virginia, Oregon, Ohio, Arizona, and Indiana competed to produce the best example of making an historic structure energy efficient.

We have also undertaken an educational project here in Washington intended to be a pilot for those programs that will be introduced in other cities around the country.

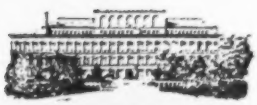
Another area of activity which has been mandated to the National Building Museum by its legislation and in which significant progress has been made is in the area of historic documentation and research. The value of the center can perhaps be seen by the fact it has already acquired a collection of more than 52,000 drawings detailing the construction of the buildings made of terra cotta in such diverse cities as Albuquerque, NM, Cheyenne, WY, Reno, NV, Boston, MA, Tulsa, OK, Toledo, OH, Helena, MT.

All of these specific achievements have made NBM into a national institution showing how it will fulfill the promise of its congressional mandate.

To go beyond this stage, to implement the master plan, NBM needs to receive Federal seed money called for in the amendment before you.

Thank you.

[The prepared statement of Mr. Lowry follows:]



NATIONAL
BUILDING
MUSEUM

Written Statement of Bates Lowry, Director, National Building Museum

Prepared for the Senate Subcommittee on Public Lands and Reserved Water

Hearing, 28 June 1984

On behalf of the National Building Museum .

Mr. Chairman, Ladies and Gentlemen:

The National Building Museum is grateful to this Committee for the opportunity to come before it to give our views on that part relating to us of the proposed amendment (H.R.2889) to the National Historic Preservation Act. Briefly stated, what the museum proposes to address is why a National Building Museum was created; how it is organized; what its programmatic and financial long-range plans are; why the federal seed money included in the amendment is critical at this particular time; and what the museum already has achieved.

I.

To begin, then, with the most basic question:

Why a National Building Museum?

Although there are many great museums along and near the Mall that document and celebrate the arts and sciences of mankind, there is not one that has as its special subject or concern the building arts--despite the fact that our country's

achievements in architecture and engineering are among America's greatest contributions to the advancement of civilization. The National Building Museum fills that gap.

Although there are many professional organizations, trade unions, and special interest groups representing the vastly-diverse building industry of America, there is no single organization that provides a forum where all parties involved in that industry can come together. The National Building Museum provides such a place and in doing so allows problems affecting all parts of the industry to be addressed from a non-partisan point of view that should result in a better built environment for our nation.

Among all the formal and informal educational opportunities our nation offers there are few that provide the general public with a chance to know more about their building heritage or how decisions are made that determine the nature of their built environment. The National Building Museum's programs will give the general public that opportunity.

Since its inception, the National Building Museum has effectively mounted programs toward the fulfillment of each and every one of these goals and it has laid the groundwork for its future growth. That all of its efforts have met with success is due in part to the fact that the moment for such a program is now. Ever greater numbers of people are keenly interested in what our museum has to offer and are watching its progress with concern and care. As one writer commented, "Now that we have one, it is hard to believe there wasn't always a National Building Museum."

And it is not just in our country where the idea of a National Building Museum seems so right. Already NBM--America's museum --has become a model for other nations who either intend to create similar institutions or are expanding existing ones. We have been visited by or in correspondence with colleagues from India, Germany, France, England, Japan and Holland and will be exporting our programs on American building to many such countries.

II.

How is the National Building Museum organized?

The structure of the museum's governing body has been determined by the conditions and intent of its original enabling legislation (Public Law 96-515 of 1980).

The Act was itself an affirmation and approval of the concept set forth two years earlier in a joint Senate-House resolution. This resolution declared the Pension Building to be a national architectural treasure that must be preserved and it suggested that its appropriate use would be as a museum for the building arts. Congress directed that special feasibility studies be made to examine this proposition by the National Endowment of the Arts, the General Services Administration and the Smithsonian Institution. Conducted over the following two years, these investigations helped determine four key elements of the 1980 legislation that affected the structure of the museum:

1) the Pension Building was made available to the Building Museum "without charge." The General Services Administration was charged with its restoration, maintenance and repair, and directed to begin its renovation immediately;

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2) as a significant part of the museum's program focuses on America's building heritage, the enabling Act also directed and authorized the Secretary of the Interior to provide to the museum up to $500,000 per year in matching funds for programs concerned with historical preservation;

3) the administration and direction of the museum itself was assigned to the private sector. In doing so the Act recognized that, unlike a general art or science museum, a building museum has an identifiable constituency. Because it will especially benefit from NBM programs, the building community should help support the new institution. By putting the development of the museum primarily into the care of the private sector the legislation intended to encourage such support, although not to the total exclusion of federal funding, particularly in the initial stages of the museum's growth;

4) the legislation called for the private corporation (National Buidling Museum) to enter into a cooperative agreement with the two federal agencies involved (General Services Administration, Department of Interior) to carry out the terms of the act with a "minimum of federal intrusion." In the lengthy negotiations that preceded the signing of the agreement in June 1982, the governing Board of the corporation was expanded to include as voting members ten ex-officio directors representing relevant bodies of the federal government. These directors or their appointed representatives attend all Board meetings and receive all committee minutes and other mailings going to elected members of the Board. By these means the key members of the most appropriate agencies and Congressional committees have been made a part of and kept informed of the activities of the museum.

Due to the active repair and renovation of the Pension Building the General Services Administration, one of the signers of the tripartite agreement, has been closely involved with the development of NBM. The museum has been acting as a guardian of this architectural masterpiece--its curator--ever since PL96-515 came into existence. NBM gradually has been able to monitor

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the activities in the Great Hall so as to reduce the abuses it previously suffered. It has worked in tandem with the Public Buildings Service, both on the national and regional level, to supervise the renovation of the building for its new use as a home for the museum.

The Department of Interior's role in the cooperative agreement was essentially linked to the matching-funds provision. As this money has never been provided, the museum has so far had few working arrangements with the department, although the Secretary's designate has attended and taken part in all the Board meetings.

The private members of the Board of Directors, elected for three-year terms, are chosen from across the nation to represent five major segments of the building industry:

1) professional design groups such as architects, engineers, landscape architects, interior designers, city planners,

2) manufacturers of building products and systems,

3) financial interests represented by banks, insurance and development companies,

4) builders and contractors,

5) building craftsmen and trades unions.

Other seats are held by members active in the academic community, the media and by public-spirited citizens.

The Board of the National Building Museum clearly represents, therefore, the partnership between the federal government and the private sector that the legislation envisioned.

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However, the amendment now before you specifically requires an evaluation be made of how well the current arrangement is working and directs the museum to consider other alternatives. Should the museum become a part of the Smithsonian Institution? Should it become a Presidentially-appointed body? Should it come under the aegis of the Public Buildings Service? A report and recommendation is to be submitted one year after this amendment takes effect.

III.

What is the projected growth pattern of the museum?

NBM has conducted three intensive long-range studies from which it has evolved an overall Master Plan for the next decade. The first four years of the plan have been developed in great detail.

One long-range study established the programmatic goals for each section of the museum and determined the increment of growth needed each year for the museum to become a nationally-effective institution at the end of the four-year period.

Another study evaluated the costs of reaching this goal in each area of the museum's programs as well as estimating the potential income that such growth could produce. By these means the museum was able to weigh the investment cost of each program element against its potential return. The Board of Directors could chart the development of the museum with a solid idea of what the costs would be.

The third long-range study gave the Board an even-more-objective reading of how it should proceed by providing it with an independent assessment of how much money a national building

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museum could raise from the private sector to support the program goals. Directed by a professional fund raiser hired by the Board, this study was conducted through personal interviews with Board members and with other individuals whose expressed interests or affiliations in the building industry made them likely candidates for Board membership at some future date. Others interviewed were people responsible for philanthropic giving or effective in fund raising for similar organizations.

In all cases, those interviewed were asked whether they believed there was a need for such a museum; would they support it and how much; how would their giving be affected by the fact that it was a joint federal/private sponsorship; and, did the Master Plan for the museum seem sound? The results of this survey were so encouraging that the Board accepted the recommendation of the consultant that a $15 million four-year fund drive be undertaken to cover the costs of the first four years of the Master Plan. The Board also agreed to initiate the drive by raising $1.5 million from its own members in the first 18 months. The drive has begun.

Simultaneously, the museum worked with an architectural firm commissioned by GSA to determine the architectural plan by which the Pension Building could be adapted to serve as a museum. Coordinated with the ongoing programmatic studies, the architectural planning faced the problems of the ultimate disposition of space in the Pension Building for permanent and changing exhibitions, archives, library, etc. The subsequent assignment of available space to these functions in light of their projected growth resulted in the realization that in the far future the museum would need to occupy the entire building and even add other space to service the program efficiently.

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Although this would not occur immediately, the architectural study laid out the steps to convert the building to museum purposes with the least cost. For the immediate future, after renovation is completed in 1987, substantial space still would be available for use by other federal entities.

At this moment, therefore, the National Building Museum has a detailed long-range Master Plan based on three special studies--programmatic, financial and architectural. What is needed to put the Master Plan into action is the federal seed money which the bill currently before you provides.

What this commitment by the federal government will do at this time is incalculable in terms of its ultimate return. First of all, it will signal the private sector that, despite the lack of federal matching funds during the past three years, the Congress still stands behind the compact it designed in 1980. Congress thus will continue to challenge the private sector to work with it to produce a nationally-significant institution. Secondly, it will provide the funds necessary to launch the Master Plan, which will lead to a progressively-stronger organization, increasingly capable of making its own way. The long-range Master Plan assumes that the federal seed money is a finite amount provided over a set period of time. At the end of this period, the museum will have obtained the critical mass necessary to generate program funds from the building community.

That it cannot do so yet is, apparently, a natural condition for all new cultural institutions. Their ability to raise funds is related to their ability to put on the programs which would gain visibility adequate to attract those very funds.

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Federal seed money will help the National Building Museum resolve that chicken-egg dilemma, which is made even more acute by the fact that, for the next four years, NBM's building will be under renovation.

Because of the need for renovating the building, the museum built in a contigency measure within its Master Plan that called for the creation of a series of provisional galleries within the building as soon as possible. Appropriately labeling this goal "Operation Beachhead," the museum was able to convince Congress to include this renovation project as a part of the overall 1984 repair and alteration program for the Pension Building. By the time the hundredth anniversary of the first use of the Pension Building for a Presidential Inaugural Ball is celebrated in January 1985, NBM will be able to demonstrate how the building will operate as a museum. The public will begin to understand how much it will profit from the programs of a building museum.

How this will be done can be understood by taking a look at the five exhibitions with which NBM plans to inaugurate these galleries:

1) One will deal with the unique design and construction of the Pension Building, itself, and with its brillant architect Montgomery C. Meigs.

2) Another gallery will feature never-before-exhibited, extraordinary masterpieces of architectural drawings, all of which were made for the construction of federal buildings from the 1840's to today.

3) Another exhibition will honor one of America's foremost craftsmen, the Philadelphia ironworker, Samuel Yellin, whose beautiful wrought-iron creations enhance buildings throughout the nation.

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4) Yet another exhibit will demonstrate, through a series of excellent models, the history of the development of the private house in New England from the 17th century dwelling to today's energy-efficient structure.

5) The last in this opening series of exhibits deals with the Brooklyn bridge though a sequence of handsome models showing the bridge at different stages of construction and the genius of its builders.

All of these exhibits are facets of what the museum is about. All of them speak with pride of America's accomplishments in the art of building. The federal seed money will make these and similar exhibitions possible in these galleries over the next four years.

The fact that its home base would be under renovation gave the museum added impetus to mount an outreach program of exhibitions, publications, lectures and films that could be exported to communities across the entire country. These programs would bring the National Building Museum to people in selected cities all over the country, thereby making NBM more than just a place to visit in the nation's capital.

Thus, the four-year Master Plan calls for the museum to mount an increasing number of traveling exhibitions, to sponsor a rapidly-growing circulating film program, to initiate and oversee a wide variety of adult education programs and to introduce into our schools a nationwide curriculum dealing with America's building heritage and the decision-making process that affects the built environment in a community. All of these activities are described in detail and assigned a cost-effective priority within NBM's Master Plan. This regulated growth and increased effectiveness of the National Building Museum on the national level will take place only if the necessary initiative for this plan is made possible by federal assistance.

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In brief, all of the seeds for the museum's growth have been planted; their fruition awaits only the lead of the federal government in providing the funds. We believe the museum is now in a position, with your aid, to successfully bridge the gap between plans and reality, to become an institution that can function on its own.

IV.

How has the museum been able to function up to now and what has it achieved?

During the almost-four years since the enabling legislation came into effect, NBM has been supported primarily by contributions from the private sector, particularly from the different segments of the building community. Labor recognizes the museum as fulfilling the long-felt need for a showcase of what American craftsmen have accomplished; industry sees NBM as becoming the valuable central information bank the building community now lacks; design professionals realize NBM is increasing the public's awareness and appreciation for their role in building America's cities and homes; builders and contractors look to NBM to represent their achievements; and, financiers and developers see NBM as providing a forum which will ultimately raise the quality of the projects they are building.

All of these groups have accepted the challenge of joining with the federal government in support of NBM. Indeed, without their financial help, NBM would not be ready today to put into action immediately a Master Plan whose major components already have been tested and refined by many specific NBM projects.

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Financial support from the private sector alone, however, could not have supported all of the progress NBM has made over the past four years. NBM has come as far as it has due to the sacrifices of a devoted professional staff. No similar institution anywhere in this nation can match NBM's record of contributed staff time--more than one quarter million dollars per year--in addition to the services provided by pro bono accountants, auditors and lawyers. Together, all of these committed people have moved NBM continuously forward. They have organized and run the museum's first activities; they have participated in the long-range planning and they, with the Board, have raised the money to keep going.

Their belief in the goals of NBM has made it possible for NBM to be recognized, as it was recently in the New York Times, as an unique institution with great potential for playing a forceful role in the life of our nation. This welcome assessment, as well as many other similar ones, is the result of critical judgments based not only on ideas and plans, but more importantly, on real, ongoing, specific museum activities.

This is not the place to list all of the museum's activities since its inception, but several key accomplishments on the national level should be noted:

1) NBM's award-winning, quarterly publication, BLUEPRINTS, is the only journal about the built environment written for the general public. It has attracted critical acclaim as well as a large readership and has spread information about the museum and its plans far afield. Subscribers come from every state in the union as well as such foreign countries as New Zealand, Germany and Mexico.

2) Particularly successful and well-received across the country has been the museum's program of traveling exhibitions. One exhibit dealing with new trends in

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American architecture opened in Portland, Oregon and traveled to Houston, St. Louis, New Orleans, as well as being seen at the National Museum of American Art in Washington, D.C. Another exhibit, which celebrates the fiftieth anniversary of TVA and reviews the great engineering feats of that program, has been shown to over 10,000 people at the Mississippi River Museum in Memphis, Tennessee. By the end of its tour, it will have been seen in Kentucky, Texas, North Carolina, South Carolina, Rhode Island and at NBM itself in Washington, D.C.

Other exhibitions are in the course of planning and will enter the tour circuit over the next four years. At the end of this period, the traveling exhibition program will be circulating shows every year and will have an impact in every corner of our country.

3) The National Building Museum has sponsored with the Association of Collegiate Schools of Architecture, the National Park Service, the National Trust for Historic Preservation and the U.S. Department of Housing and Urban Development a nationwide competition for this country's schools of architecture on "Saving Energy in Historic Buildings." Schools from such states as Virginia, Oregon, Ohio, Arizona and Indiana competed to produce the best examples of making an historic structure energy efficient. Ball State University won first place and Virginia Polytechnic Institute second.

This program met with much success and appreciation by all the schools and opened the way not only to plans for future competitions but to a close working relationship between NBM and the professional academic community.

4) The National Building Museum has also undertaken many educational programs here in Washington which are intended to serve as pilot projects in preparation for introducing NBM programs in other cities around the country. Especially successful have been carefully-organized tours of buildings currently under construction, newly completed buildings as well as historic sites. The experience gained from these tours will enable NBM to move ahead swiftly with its national programs, so that during the next four years it will be producing these programs in conjunction with local organizations in at least ten major cities.

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This pattern of development also has been followed in the jointly-managed educational courses in historic preservation offered by NBM with the National Preservation Institute. After two years of offering courses here in Washington, these educational opportunities are being extended to communities around the nation.

5) Another important component of NBM's national program is its Building Information Center, which has already undertaken a survey of existing data banks dealing with various aspects of the built environment. NBM's intent is to create a network of such organizations so that a central information outlet can be established. Although housed here in Washington, such a data center would be easily accessible by electronic means, enabling it to serve the entire country.

All of the plans for traveling exhibits, educational programs, and information center activities have been carefully coordinated in NBM's Master Plan to achieve the maximum impact in a given geographic area. The news and feature stories in BLUEPRINTS will be selected with an eye to reinforcing museum activities in different regions of the country.

6) Another area of activity mandated to the National Building Museum in which significant progress has been made is the historic documentation and research center. Already the help of this center has been requested from institutions and individual teachers, students and scholars in this country and abroad. The value of this center for documenting and expanding the knowledge of America's building heritage was manifested by its acquisitions through gifts of more than 52,000 drawings detailing the construction of buildings made of terra cotta in such diverse cities as:

Albuquerque, New Mexico
Cheyenne, Wyoming
Reno, Nevada
Hartford, Connecticut
Boston, Massachusetts
Norfolk, Virginia
Tulsa, Oklahoma
Little Rock, Arkansas
Toledo, Ohio
Helena, Montana

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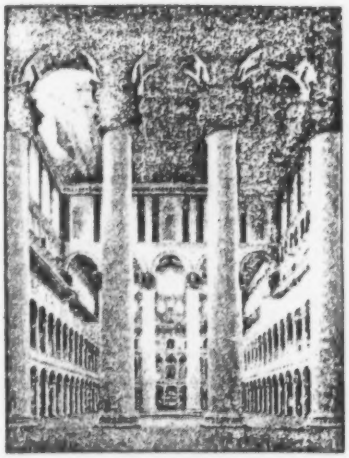
Thanks, therefore, to the support of the private sector and the contributions of the professional staff, the National Building Museum has been able to make real the promise held out in its original Congressional mandate. To go beyond this stage, to implement the Master Plan, NBM needs to receive the federal seed money called for in the amendment before you.

The New York Times

SUNDAY, MAY 20, 1984

Museums Take In Architecture



The National Building Museum in Washington—increasing awareness of America's architectural heritage

EXCERPTS ...

By JOSEPH GIOVANNINI

Five years ago it was hardly possible to visit a single major museum anywhere in the United States or Canada and expect to see architectural drawings and models — not to speak of a special department dedicated to them.

* * *

But since the late 1970's, the situation has changed. Despite special difficulties in exhibiting architecture — you can't put an actual building within museum walls — it has begun to take its place among the other arts in museums and various institutions.

* * *

In Washington, D. C., the National Building Museum was founded in 1980 by an act of Congress; construction on its first galleries starts June 1, in the remodeled Pension Building; they will open early next year. In New York, since 1980, the Municipal Art Society has coordinated numerous architectural exhibitions in galleries of the Villard Houses at the Urban Center; over the last two years at Columbia University, the Temple Hoyne Buell Center, the first institution for the study of American architecture, has been established; it will eventually have an exhibition space. In 1981, the Art Institute of Chicago founded a new architecture department, which has a small, permanent gallery. In California, the San Francisco Museum of Modern Art announced plans last August to open its department of architecture and design, and will soon name its first permanent curator. In Los Angeles, Richard Koshalek, director of the Museum of Contemporary Art, recently said the museum will hire a curator of architecture.

* * *

"It is not just an American phenomenon," says Phyllis Lambert, founder and director of the Canadian Center for Architecture in Montreal. She says there is a "burgeoning" interest abroad, with a new architecture museum opening in Frankfurt this May, and the new Musée d'Orsay in Paris, specializing in the 19th century, with a strong architecture section. In 1979, the newly formed International Confederation of Architectural Museums held its first conference in Helsinki.

* * *

"Traditionally, architects donated their drawings to archives, like Avery Library at Columbia," says Max Protetch, of Max Protetch Gallery in New York, which since 1979 has sold architectural drawings. "Only recently has the subject blossomed into an active area with aggressive collecting and showing."

Museums, of course, collect original artifacts, but, as the New York architect R. M. Stern has observed, "You can't collect buildings." Given this limitation, one essential reason for the entry of architecture into the museum, explained Mr. Stern, has been the profession's renewed interest in "making beautiful drawings."

* * *

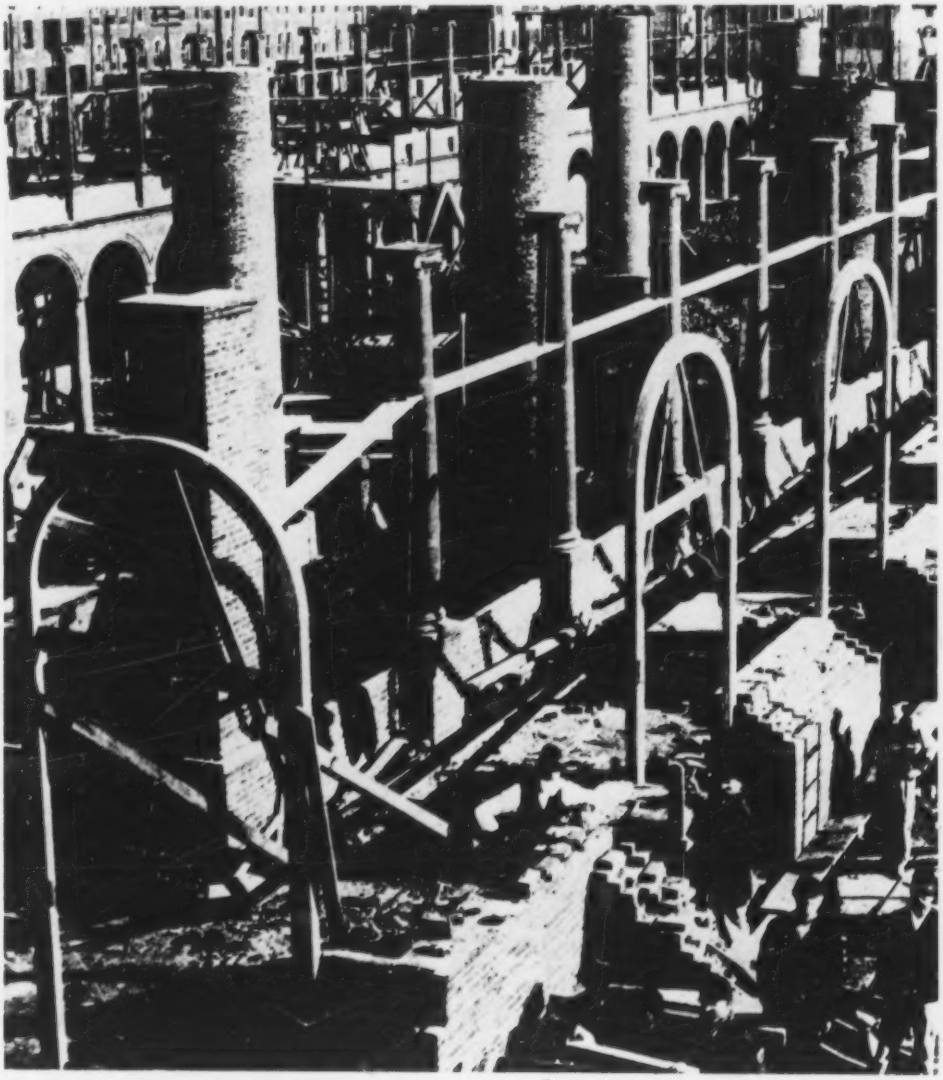
Robert L. Sweeney, the executive director of the R. M. Schindler house in Los Angeles, which has mounted numerous architectural exhibitions, notes that "The preservation movement in general has had a great deal to do with raising popular awareness about architecture." Bates Lowry, director of the National Building Museum says that all the 1976 Bicentennial exhibitions helped create a greater interest in American cultural heritage.

For Mrs. Lambert, who has long been active in historical preservation, it was important to create a widely shared appreciation of buildings: "You have to make people love buildings to keep them" she says. "But how can you enjoy looking at a building without knowing what its parts are and knowing its history?"

* * *

The National Building Museum is also focusing on architecture as the activity of building. Mr. Lowry, its director, anticipates the museum will represent all building trades, development and financing, as well as architecture in what could become a place that illustrates all the complexities of constructing the built environment. The NBM has the potential of dealing with national problems with a breadth that surpasses museums which specialize in architecture alone.

BUILDING THE
BUILDING MUSEUM



NATIONAL BUILDING MUSEUM

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Edward T. Hall
Gerald D. Hines
Marshall M. Holleb
Richard H. Howland
John T. Joyce
Thomas J. Klutznick
Phyllis Lambert
J. Robert Mann, Jr.
David O. Meeker, Jr.
Lewis Mumford
Cesar Pelli
James W. Rouse
Martin E. Segal
Chloethiel Woodard Smith
Mrs. Adlai Stevenson
Nan G. Swid
Joseph A. Turner III
Robert Venturi
Paul Weidlinger
Beverly Willis

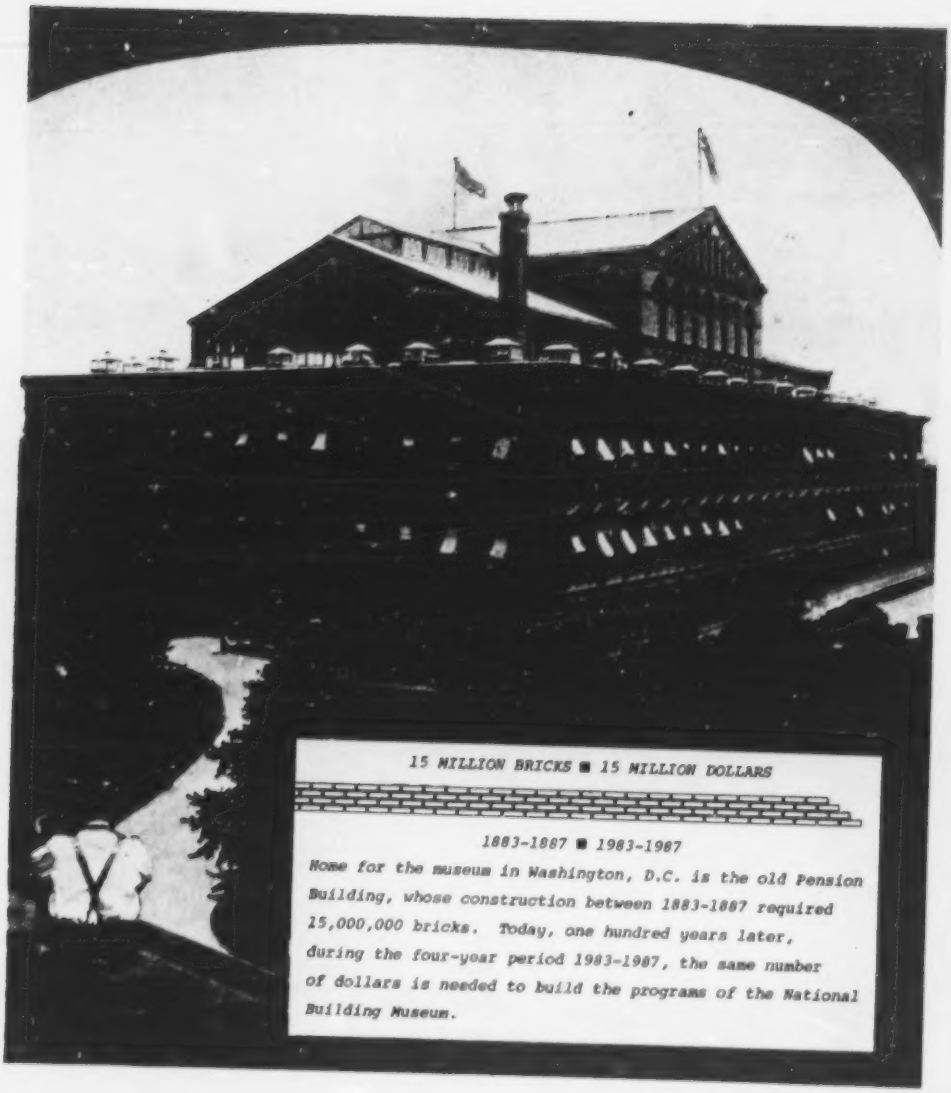
Ex officio

Secretary, U.S. Department of the Interior
Secretary, U.S. Department of Housing and Urban Development
Chairman, Senate Committee on Environment and Public Works
Chairman, House Committee on Public Works and Transportation
Administrator, General Services Administration
Commissioner, Public Buildings Service, G.S.A.
The Architect of the Capitol
The Archivist of the United States
The Librarian of Congress
President, National Trust for Historic Preservation

This statement has been prepared for friends of the National Building Museum who are being asked to provide support toward achieving the objectives of this private nonprofit institution. Contributions from the private sector, particularly from the building community, must be raised to initiate and develop the museum's programs. These donations will augment and balance government funds already being expended for the renovation and maintenance of the museum's home in the old Pension Building. Current plans call for $15,000,000 to be raised between 1983-1987, $3,500,000 to be secured during the first 18 months.

We believe learning more about NBM and its goals will convince you that the museum's programs have far-reaching importance for our society.

David M. Childs, President
Bates Lowry, Director


15 MILLION BRICKS ■ 15 MILLION DOLLARS
1883-1887 ■ 1983-1987
Home for the museum in Washington, D.C. is the old Pension Building, whose construction between 1883-1887 required 15,000,000 bricks. Today, one hundred years later, during the four-year period 1983-1987, the same number of dollars is needed to build the programs of the National Building Museum.

Mandate for NBM

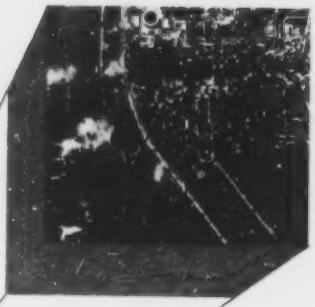
Established by an Act of Congress in 1980, the National Building Museum is the result of a private-federal initiative to found a new national institution devoted solely to the building arts whose programs would contribute to improving the built environment of America.

No other institution in the United States has a similar mandate nor does any other country have a museum devoted to this cause.

Appropriately this unique institution is located in a major architectural landmark in our nation's capital, the century old Pension Building in Judiciary Square. NBM's home is a powerful expression of the American genius in building, for it reflects both an inventive engineering approach to structural design as well as a keen and respectful eye for the art of architecture. The federal government makes the building available to the museum without charge and is responsible for its maintenance and renovation.

Not only is this impressive building an apt choice for a monument to our country's building achievements, but it also enables the museum to provide a home, a center and a forum for all the diverse members of the building community who, heretofore, have had no single place where they could come together to exchange ideas, opinions and information. NBM in Washington, D.C. will now fulfill that long-felt need.

Man and his works are also part of Nature



■ In addition to serving as a rallying point for the building industry, NBM was brought into existence to promote educational programs to increase our citizens' awareness and knowledge about where they live. One need not come to the museum's home in Washington, D.C., however, to benefit from NBM's programs, as they are designed to take place at museums, art centers, libraries and educational institutions throughout the country.

"Our role is to educate the public about the built environment... if we do for buildings what the environmentalists have done for trees, we will be doing a good job."

Bates Lowry, Director, NBM

■ Ultimately, NBM's programs will develop a knowing and alert public that together with members of the building community will determine what relationship our society should establish between the built and the natural environments, striking a wise balance between our nation's natural splendors and what we ourselves have added.

NBM is fulfilling its mandate by

- mounting a national program of exhibitions, publications, and other educational activities to enhance the general public's understanding and appreciation of all aspects of the building arts and sciences;
- assembling a much-needed central information bank for design professionals and all members of the building community who shape our environment;
- establishing a national reference and research center for teachers, critics, writers and students concerned with America's past achievements and present efforts in the art of building;
- working jointly with the other groups in the country concerned with the building arts, many of which helped identify the need for this national institution and aided in its birth.

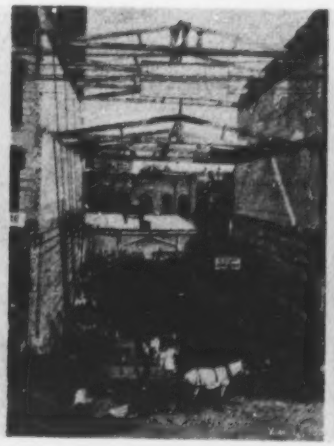
"...there is a crying need for a more comprehensive understanding of the building arts, architecture, design and engineering techniques."

Michael L. Ainslie, President
National Trust for Historic Preservation

"America is never finished." Carl Sandburg

"Updating" a San Antonio bank.

March 19, 1909



May 17, 1909

December 1, 1909

"A national institution devoted to celebrating and promoting the building arts in America has long been needed."

Henry N. Cobb, Chairman
Dept. of Architecture, Harvard University

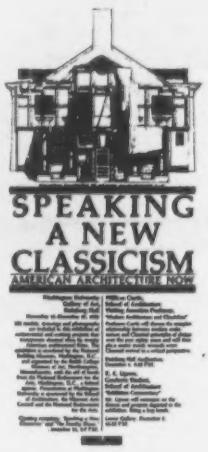
Construction progress photographs from **HBM** *Documentation Center. Gift of John Mannes.*

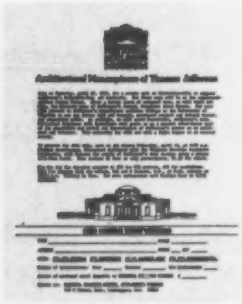
NBM is already at work

- organizing a traveling exhibition service, with support from the National Endowment for the Arts, to help other institutions throughout the nation satisfy the public's growing interest in all aspects of building;

  One such exhibition of drawings, models and photographs brought a new understanding of current trends in American architecture to viewers in Portland (Oregon), Houston, St. Louis, Washington, D.C. and New Orleans.

  Another celebrates the mighty achievements of TVA on its 50th anniversary.





- offering guided tours of both historic landmarks and recent buildings;

- providing, with the assistance of the Graham Foundation for Advanced Studies in the Fine Arts, a college-level intern program that offers students working experience in the fields of architectural history and criticism, preservation and information science as well as in all areas of museum activity;

- publishing BLUEPRINTS, the nation's first nonspecialized journal aimed at increasing the public's knowledge about past and current events in the built environment;

  Articles about this country's building heritage appear beside reports on the most recent urban plans and on the problems facing professionals in the building community.

- sponsoring workshops in cooperation with the National Preservation Institute on various aspects of preservation;

- making available a collection of over 50,000 shop drawings for terra cotta buildings throughout America to assist developers, builders and design professionals involved in restoration work;

- operating a news-gathering network to keep the general public up to date on current building activities in all parts of the country through exhibitions, publications and television news briefs.

Symbol of NBM

NBM poster

- A stunning architectural and engineering triumph, the Great Hall of the Pension Building is a fitting symbol of the museum that honors the building craftsmen and designers of our nation.

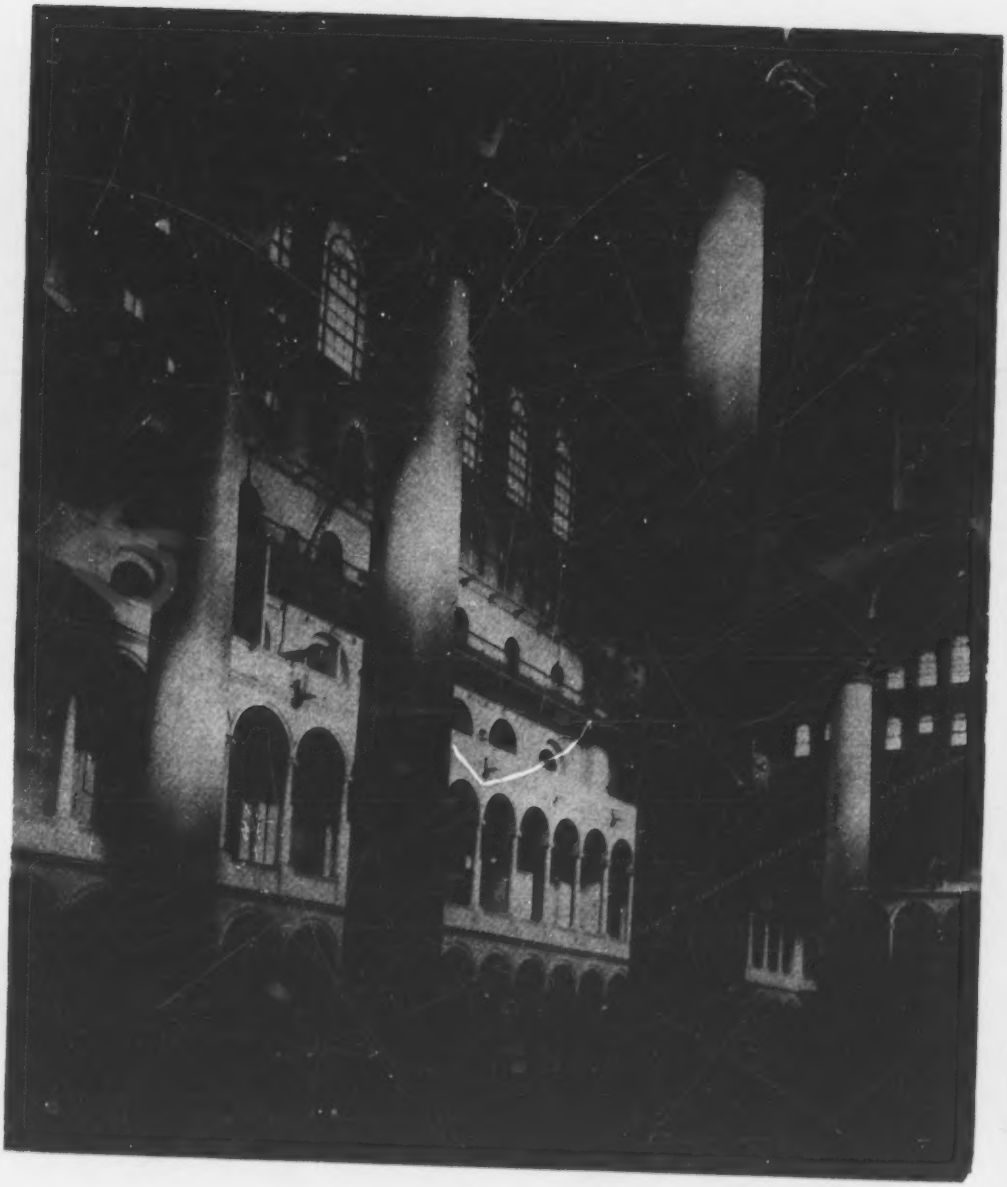
- In addition to serving as a focal point for all of America's building activities, the Great Hall will continue to provide a dramatic setting for Presidential Inaugural Balls and other important events in the nation's capital.

Great Hall decorated for Presidential Inaugural Ball.

- The Great Hall is already being restored to its original architectural splendor; funds for the renovation come from the federal government as part of its contribution to the joint private-federal partnership.

"The Great Hall of the Pension Building is the most astonishing interior space in America."

Philip Johnson

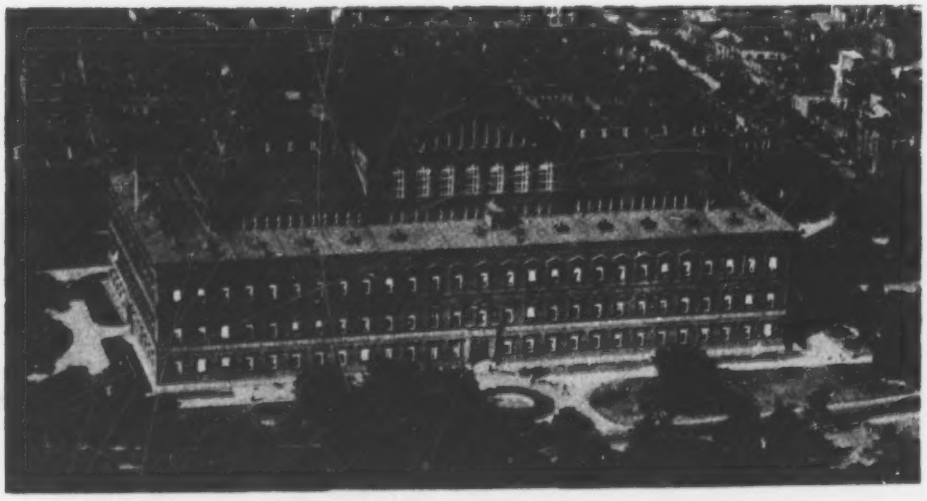


NBM America's Building Showcase

- The vast interior of the Great Hall also serves to bring fresh air and natural light into the vaulted, 1,000-square-foot rooms that ring the courtyard. Originally designed as offices in which 1,600 clerks processed pensions for veterans, this series of rooms, opening into each other through large archways, will easily adapt into exhibition halls for the museum.

- Here the museum will stage rotating exhibitions like "Off-On," a look at the development of our country's highways, and others illustrating major American architectural, engineering and planning accomplishments.

- In other galleries, permanent exhibitions of drawings, models, photographs and artifacts from NBM's collection, such as an exhibit on the use of cast iron in the nineteenth century, will give viewers a better understanding of different aspects of America's building heritage.



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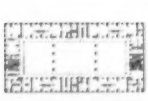


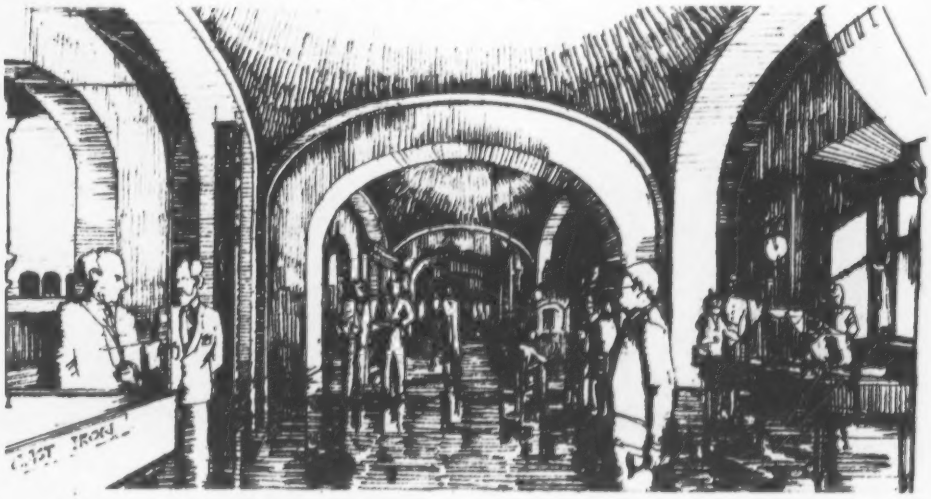
- Visitors will come to the museum not only to enjoy exhibitions, but to do research in the library and archives, to use the information center, to listen to lectures, to see films and to take part in conferences. These many activities will make the museum the natural center for all those concerned with the built environment and their own interests will be advanced by the creation of such a national forum.

- The renovation necessary to adapt the building for these uses already is in the planning stages, guided by a comprehensive, long-range Master Plan drawn up by the museum.

"If it had been designed to be a national building museum, it could not have been done more effectively."

Daniel Patrick Moynihan, Senator from New York

Cooper-Lecky Partnership *Concept drawing of a typical exhibition hall.*

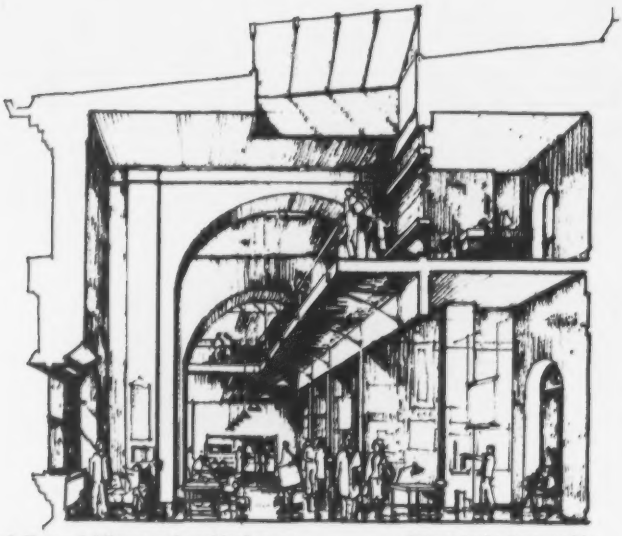


NBM Master Plan

A long-range plan to guide the development of the museum over the next 10 years has been drawn up by the staff and adopted by NBM's Board of Directors. The first phase of the plan, covering the period between 1983-1987, will bring the whole range of the museum's activities into play:

- *NBM's national showcase in the old Pension Building will come alive with exhibitions, lectures and conferences held in provisional spaces as the building undergoes renovation.*
- *The museum's nationwide extension program will grow rapidly, its impact heightened by concentrating activities in selected key cities.*
- *NBM's permanent collection will be formed through gifts of records of construction companies, architectural and engineering blueprints and drawings and actual artifacts from important American buildings, all of which will find a place in NBM's exhibit halls.*
- *Books will be added to the reference library, data organized and stored electronically in the information center, and photographs, drawings and papers intended for research rather than display will enlarge the holdings of the documentation center, making NBM's services more valuable every year.*
- *A much-needed national institute will be started to provide a place where selected students and practitioners in the engineering and architectural fields can work together on finding solutions to some of the most-pressing environmental problems faced by our society.*

After the museum's official opening in its newly renovated home in late 1987, a second phase of the Master Plan covering the next six years will come into effect.



Concept drawing for location on third floor of library and archival space. *Cooper-Lecky Partnership*

[redacted] 4 Year Start-up Costs of Master Plan [redacted]

Exhibition and Film Programs	$2,365,000	Museum Service & Administration	$2,587,000
Educational Programs . .	1,770,000	Development, Membership & National Affiliation . .	1,236,000
Preservation	1,465,000	Capital Equipment . . .	2,730,000
Conservation & Research Center	152,000		
Building Information Center	1,641,000	Total Costs	$15,000,000

"...it seems to me...the mere fact there is a museum that is going to be talking in terms of architecture and building is something that is very important in our society. I think it is going to make a big difference."

John F. Seiberling, Representative from Ohio

"NBM and its programs will encourage the public to take a closer look at the many contributions to society of America's architects, developers, engineers and construction workers."

Robert A. Georgine, President
Building and Construction Trades
Department, AFL-CIO

NBM & the Building Community

Members of the following groups within the building community already support the museum and are represented on its national Board of Directors:

- building product manufacturers
- construction firms, contractors, builders
- realtors, developers, financiers
- construction trade unions
- design professionals: architects, engineers landscape architects, interior designers

Laying the Groundwork

- To achieve the foremost objectives of NBM's Master Plan and to fulfill its commitment to create this long-needed institution, NBM's Board of Directors is mounting a Comprehensive Fund-Raising Campaign.

- To spearhead the campaign, the Board is raising $1,500,000 from its own members toward the initial target of $3,500,000 for the first 18 months. These funds will provide the groundwork the museum needs to move its programs from the drawing board into full-fledged operation.

- Over the first 18 months the Board will ask others to join it in making two-year pledges to meet the $3,500,000 goal. Reaching the immediate goal will require gifts in excess of $100,000 as well as contributions in the $5,000, $10,000, $25,000 and $50,000 range. Finally, general support in the form of many smaller gifts is needed to swell the total and assure the museum a vigorous beginning.

Level of Giving Required During First 18 Months

Range	Number Needed	Total
$500,000	1	$500,000
250,000	2	500,000
100,000	8	800,000
50,000	10	500,000
25,000	20	500,000
10,000	30	300,000
5,000	50	250,000
under 5,000	many	150,000
		Total $3,500,000

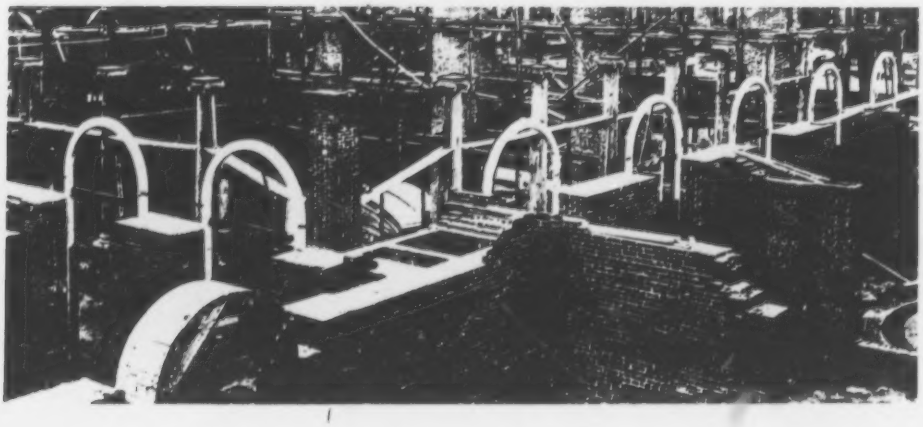
The Full Campaign

15 MILLION BRICKS ■ 15 MILLION DOLLARS
1883-1887 ■ 1983-1987

- The total requirement of $15,000,000 for the next four years will be met by building a broad base of support from those who share the belief of NBM's Board of Directors that the goals of the museum and its nationally-oriented programs will affect the future quality of America's built environment.

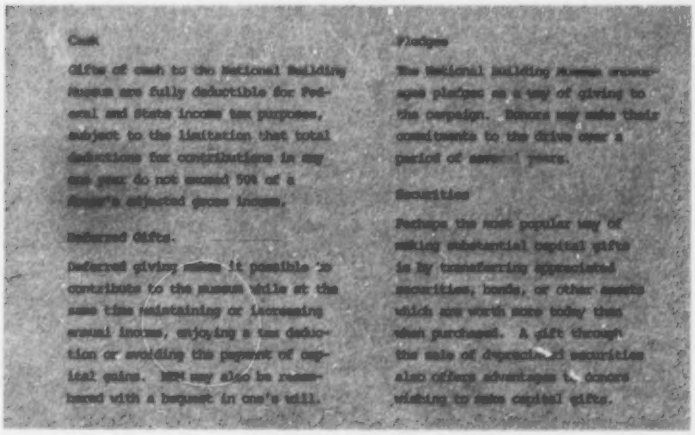
- To achieve the goal of the Comprehensive Fund-Raising Campaign, the museum will look to the following:

Anticipated Sources of Funds	
Members of the Building Community	$3,500,000
Matching program funds from the federal government	2,000,000
Individuals	3,000,000
Corporate & philanthropic foundations	3,000,000
Membership & museum generated income	3,500,000
Total:	$15,000,000



How to Participate

There are several ways to make a gift to the National Building Museum. Each presents certain advantages to the donor, depending on personal circumstances and responsibilities.



Cash

Gifts of cash to the National Building Museum are fully deductible for Federal and State income tax purposes, subject to the limitation that total deductions for contributions in any one year do not exceed 50% of a donor's adjusted gross income.

Deferred Gifts

Deferred giving makes it possible to contribute to the museum while at the same time maintaining or increasing annual income, enjoying a tax deduction or avoiding the payment of capital gains. NBM may also be remembered with a bequest in one's will.

Pledges

The National Building Museum encourages pledges as a way of giving to the campaign. Donors may make their commitments to the drive over a period of several years.

Securities

Perhaps the most popular way of making substantial capital gifts is by transferring appreciated securities, bonds, or other assets which are worth more today than when purchased. A gift through the sale of depreciated securities also offers advantages to donors wishing to make capital gifts.

- Checks should be made payable to the National Building Museum and mailed to: The Development Office, National Building Museum, Judiciary Square, Washington, D.C. 20001.
- The National Building Museum is a nonprofit, tax-exempt, 501(c)(3) organization under the IRS code.
- *For more information about contributing to NBM, contact Mary D. Hewes, Campaign Coordinator, at the above address or call (202)783-0690.*

This publication made possible by a grant from the Skidmore, Owings & Merrill Foundation.

Senator WALLOP. Thank you, Mr. Lowry.
Mr. Haase.

STATEMENT OF RICHARD O. HAASE, PRESIDENT, NATIONAL BUILDING MUSEUM

Mr. HAASE. I think Mr. Lowry has summed it up in a very concise and informative way, and I would only say or add to that that the success of the National Building Museum is deeply rooted in the cooperation and the partnership between the private sector and the Federal Government, and I think that is enough said.

Senator WALLOP. Let me ask since you brought it up, and so did the Department, the statement that no funds have been budgeted and none have been appropriated under the $500,000 a year matching grant, is that because you haven't got your $500,000?

Mr. LOWRY. No; we have made the match every year, and we have applied for it, but without any result.

Senator WALLOP. Well, the Department brings up some interesting points when they state the amount of subsidy the museum already gets is rather significant. You get the building available without charge which is being renovated, and GSA bears the cost of maintenance without expense. The museum is permitted to manage the building's courtyard and charge fees for its use and to retain that revenue, and that you even use the Federal telecommunications system, and then they say there is a question as to what would actually be done with the money. There are a few museum collections, and virtually no permanently emplaced exhibits. It is not as though there will be major costs for relocation that can be directly associated with the renovation of the building.

Mr. LOWRY. Let me respond in part to those. As far as there are no exhibits in place, that is because the building has yet to be renovated. We could not possibly have exhibitions in the building in its current state. Only this March was the roof finally repaired so that it is now safe from rain, and as I mentioned, the galleries will be in place by April. The renovations started this week on those spaces.

It is a small area within the ground floor of the building. As I said, that will give us an opportunity to show what will be there.

As far as information about the collections, I don't think the Department is totally informed. As I mentioned, we do have a rather major collection already of architectural drawings. I could go on with a number of others, but we have not in any way sought to acquire permanent collections at this point in the development of the museum simply because it seemed to us that that is the danger of all museums. You just take everything that comes your way and then you find you have to go out and get more space.

Senator WALLOP. I can understand that, but the ostensible purpose of this money is to provide you staying power while the renovation takes place, and their question is what would actually be done with the money?

Mr. LOWRY. Well, essentially what would be done with that money, as you can see, it is part of this financial statement, that is only a part of the annual amount called for—that would mount our program essentially, and the program is a very broad, nationally

based program. What we have to do is mount that program so it will give us the visibility and it will be able to become revenue producing.

I should make a comment, too, about the income from the courtyard which at this point sounds as if it was a great bonanza. Let me state just a moment of history. When we took over the building, there was no control whatsoever as to what happened in that courtyard. Anyone who wanted to use it simply could ask to use it, and no one was there to look after it. There were no rules whatsoever about it.

The building was really very abused. Over the past 3 years when we have been able to have effective control we have gradually made the laws more relevant to the nature of the building, to the historic structure. It is no longer suffering from the abuses which it was when we first took over.

Income that comes from that is really not I would say a very significant amount. We deliberately set the amount to be used for an evening in that courtyard in relationship to charges made by all other institutions in town, and then lowered it because of the condition of the building. We have three people at a minimum who are full-time volunteers who run that program to make sure that it is run correctly. If we were to have to pay them, I am sure it would eat up whatever money comes from the use of the courtyard, so essentially it is a custodial function we are performing.

Senator WALLOP. I have just been informed that we have a vote at 11:10, and I still have yet another panel and one additional witness, so we will with your cooperation direct some questions to you which may help us to some resolution of this matter, and I thank you all very much for your testimony.

Mr. LOWRY. Thank you.

[Subsequent to the hearing Mr. Lowry submitted the following information:]

NATIONAL
BUILDING
MUSEUM

11 July 1984

The Honorable Malcolm Wallop
U.S. Senate
SR-206 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Wallop,

In addition to our written and oral testimony submitted at the hearing of your subcommittee on June 28th, the National Building Museum wishes to make the following comments for the record in response to your questions:

1) We fully support the aims of Senator McClure's proposal for joint funding for National Capital Arts Organizations, even though NBM's organizational structure as a private-federal partnership, as well as its national mandate, places it outside the group of "private, local" institutions who would benefit from the proposal. A comprehensive system of providing help for all the private arts institutions in Washington, D.C. would recognize the value they have for our country's capital and, at the same time, would introduce a review and oversight process that would ensure the best use of such funds.

2) The testimony about NBM by the National Parks Service reveals a lack of recognition of the Congressional process by which NBM was created and of the reasoning that led to PL 96-515. The joint 1978 Congressional Resolution declaring the Pension Building an historic architectural treasure also proclaimed that the appropriate use for the Pension Building would be as a National Building Museum. After a two-year investigation based on three feasibility studies (by the Smithsonian Institution, the National Endowment for the Arts, and the General Services Administration) the Congress created NBM to be the national institution to be housed in the Pension Building and passed legislation to achieve this end. Thus, the remark by NPS that "any responsible tenant" for the Pension Building would suffice, ignores and repudiates the intent expressed by Congress on more than one occasion.

Pension Building
Judiciary Square, NW
Washington, DC 20001
(202) 272-2448

In addition, NPS stated that it "questioned what would actually be done with the money." As the Secretary of Interior's designee attends all NBM Board of Directors meetings and has received all NBM Board mailings, including a copy of NBM's ten-year Master Plan, outlining in great detail - both descriptive and financial - exactly how the growth and development of NBM would proceed. The Department of the Interior already had ample information on how the money would be used.

Other objections by NPS to H.R.2889 already are answered in our previous testimony, but it should be noted that in general the position taken by NPS appears to be founded on the principle that only a purely federal agency can undertake the kind of programs mandated to NBM. That these programs are valuable and necessary for our society is not denied. The question is only whether NBM, as a Congressionally-constituted private-federal partnership, should be appropriated federal seed money to work with the private sector in serving its important public purpose.

Sincerely yours,

Bates Lowry
Director

Senator WALLOP. The next panel will be a panel on S. 2692 and H.R. 2982. It is Mr. Bernard Knott from Oak Creek, CO; Mr. Dan Knott from the Colorado Cattlemen's Association; and Ken Balcomb with the law firm of Delany & Balcomb, Glenwood Springs; and Stan Broome, Garfield County manager of Glenwood Springs, and I would ask you all again to observe my rules so that we can get you all heard and get to my last witness.

Your entire statement will be in the record, and anything else you wish to submit can be included in it.

Mr. Bernard Knott.

STATEMENT OF BERNARD KNOTT, RANCHER, OAK CREEK, CO

Mr. BERNARD KNOTT. Thank you, Mr. Chairman. Mr. Chairman and committee members, I am Bernard Knott from Oak Creek, CO. Oak Creek is located in the northwest quarter of Colorado. I am a rancher concerned and involved with the problem of ditches crossing the national forest lands. I would like for the problem to be solved so if my son would like to go into ranching he is not faced with the same problem.

I am speaking in support of Senator Armstrong's bill if it is amended in accordance with other testimony.

Instead of discussing S. 2692, I would like to explain why I feel it is essential that FLPMA be amended under the right-of-way section.

Under FLPMA, the Forest Service will not recognize a granted right-of-way. They wish to limit it now to 30 years, and at the end of 30 years the permit will come under the then existing rules and regulations. At the end of 30 years from now the Male, Moore & Company Ditch in which I am interested would have been in existence and used for 100 years, but they would want to treat it as though it was a new construction project. After 100 years the ditch wouldn't be doing any more then than when it was constructed in 1909.

The annual payment is to be recomputed every 5 years, but the holder of a permit is not guaranteed that the price will not skyrocket.

The Forest Service is very reluctant to put a clause in the permit that will allow transfer of the permit to a new owner whenever the land and water rights change ownership. The permit can be terminated whenever the Forest Service so desires.

I feel the most important reason is to clarify the status of ditches that cross the National Forest Service land. Do the ditches come under grants, easement, or the special use permit?

You as a Senator may feel this problem affects a very small percentage of your consistuency. In all probability this may be true, but there is a possibility that it can effect one or all of your constituents if they by chance buy land adjacent to the National Forest land which has an irrigation ditch starting on the forestland.

Here is where the pitfall comes into effect. Your abstract says that you have a clear title to your ditch and water rights, but the Federal Government says you need a permit to run water down your ditch to be used on your own land.

For these reasons given, you need to amend FLPMA to in effect say ditch rights-of-way were granted to construct irrigation ditches, reservoirs, and other means of transporting water for private domestic, irrigation, and other agricultural purposes under the laws at the time of construction whether recorded at the time or whether permits were heretofore issued.

I volunteered to come out to testify at this hearing, but I didn't realize that the cost would be equal to the price of three, 400 to 500 pound calves.

I would like for the statement to be made a part of the record.

Thank you.

[The prepared statement of Mr. Bernard Knott follows:]

STATEMENT MADE TO THE SUBCOMMITTEE ON PUBLIC LAND AND RESERVED WATER OF THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE UNITED STATES SENATE

June 28, 1984

Mr. Chairman and committee members, I am Bernard Knott from Oak Creek, Colorado. Oak Creek is located in the northwest quarter of Colorado. I am a rancher concerned and involved with the problem of ditches crossing the National Forest lands. I would like for the problem to be solved so if my son would like to go into ranching he is not faced with the same problem.

I am speaking in support of Senator Armstrong's bill, if it is amended in accordance with other testimony.

Instead of discussing S. 2692, I would like to explain, why I feel it is essential that FLPMA be amended under the right of way section.

1. Under FLPMA the Forest Service will not recognize a granted right of way. They wish to limit it now to 30 years, and at the end of 30 years, the permit will come under the then existing rules and regulations. At the end of 30 years from now, the Male, Moore and Co. Ditch, in which I am interested, would have been in existence and use for 100 years but they would want to treat it as though it was a new construction project. After 100 years the ditch wouldn't be doing any more then than when it was constructed in 1909.

2. The annual payment is to be recomputed every five years, but the holder of a permit is not guaranteed that the price will not skyrocket.

3. The Forest Service is very reluctant to put a clause in the permit that will allow transfer of the permit to a new owner whenever the land and water rights change ownership.

4. The permit can be terminated whenever the Forest Service so desires.

5. I feel the most important reason is to clarify the status of ditches that cross the National Forest Service land. Do the ditches come under grants, easement or the special use permit?

6. You, as a Senator, may feel this problem affects a very small percent of your constituentcy. In all probability this may be true, but there is the possibility that it can effect one or all of your consitutents, if they by chance buy land adjacent to the National Forest land, which has an irrigation ditch starting on the Forest land. Here is where the pitfall comes into effect; your abstract says that you have a clear title to your ditch and water rights but the Federal Government says you need a permit to run water down your ditch to be used on your own land.

For these reasons given, you need to amend FLPMA to, in effect, say: Ditch rights of way were granted to construct irrigation ditches, reservoirs and other means of transporting water for private domestic, irrigation and other agricultural purposes under the laws at the time of construction whether recorded at the time or whether permits were heretofore issued.

I would like for this statement to be made a part of the record.

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Senator WALLOP. Thank you, Mr. Knott.
Mr. Dan Knott.

STATEMENT OF DAN KNOTT, ON BEHALF OF THE COLORADO CATTLEMEN'S ASSOCIATION

Mr. DAN KNOTT. Thank you, Mr. Chairman and members of this committee. I am Dan Knott of Oak Creek, CO, and I have lived on a ranch all my life.

I am here representing the Colorado Cattlemen's Association as well as myself.

The Colorado Cattlemen's Assocation is in support of Senate bill 2692 if amended as suggested in other testimony. There are about 950 ditches in Colorado alone, and about 3,500 total in the western states according to the figures given by the Forest Service.

In addition, there are an untold number on Bureau of Land Management land. All these ditches could be affected by the land agency interpretation of the 1976 Federal Land Policy and Management Act.

The Forest Service is now requiring all farmers and ranchers to, one, sign a revokable permit or easement if they want to continue using their irrigation ditches; two, pay fees for the use of the ditch; prohibit transfer of ditch rights to new owners without agency permission.

These requirements clearly demonstrate that the Forest Service is determined not to comply with the long-established congressional policy that water rights should be governed by State laws. Legislation is now necessary to clarify the status of long-established ditches crossing public lands.

Mr. Chairman, I would like to add at this time that Senator Armstrong some 10 years ago tried to solve this problem by the administrative proceedings, and you can see that that didn't seem to work. We are here today to try to get it straightened out.

It is one thing to establish policies and fees for new rights-of-way. It is another thing to impose new conditions and even threaten cancellation of use for rights-of-way which have existed for generations.

Mr. Chairman, I would like to have this copy of a summons and complaint served upon me made a part of the record to show how serious the problem is.

Senator WALLOP. It will be.

Mr. DAN KNOTT. Thank you for the oppportunity to speak on behalf of the Colorado Cattlemen's Association. I would like to have my statement made a part of the record.

[The prepared statement of Mr. Dan Knott follows:]

STATEMENT MADE TO THE SUBCOMMITTEE ON PUBLIC LAND AND RESERVED WATER OF THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE UNITED STATES SENATE

June 28, 1984

I am Dan Knott of Oak Creek, Colorado. I have lived on a ranch all my life. I am here representing the Colorado Cattlemen's Association as well as myself.

The Colorado Cattlemen's Association is in support of Senate Bill 2692 if amended as suggested in other testimony.

There are 950 ditches in Colorado alone, and about 3,500 total in the Western states according to figures given by the Forest Service. In addition there are an untold number on Bureau of Land Management lands. All these ditches could be affected by the land agency interpretation of the 1976 Federal Land Policy and Management Act.

The Forest Service is now requiring all farmers and ranchers to: (1) sign a revokable permit or easement if they want to continue using their irrigation ditches; (2) pay fees for the use of the ditch; (3) prohibit transfer of ditch rights to new owners without agency permission.

These requirements clearly demonstrate that the Forest Service is determined not to comply with the long-established congressional policy that water rights should be governed by state laws.

Legislation is now necessary to clarify the status of long established ditches crossing public lands.

It is one thing to establish policies and fees for new rights of way; it is another thing to impose new conditions, and even threaten cancellation of use for rights of way which have existed for generations.

Mr. Chairman I would like to have this copy of a summons and complaint served upon me made a part of the record to show how serious the problem really is.

Thank you for the opportunity to speak on behalf of the Colorado Cattlemen's Association. I would like to have my statement made a part of the record.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 84-A-1121

UNITED STATES OF AMERICA

Plaintiff,

v.

DON KNOTT, DORIS KNOTT,
DOUGLAS R. JONES; and
KNOTT LAND & LIVESTOCK CO., INC.

Defendants.

NOTICE OF DISMISSAL WITHOUT PREJUDICE

The United States of America, by and through the Office of the United States Attorney, District of Colorado, dismisses the referenced action without prejudice pursuant to Fed.R.Civ.P. 41(a)(1).

In support thereof the United States of America states that this dismissal is prior to answer or responsive pleading being filed by the defendants, singularly or jointly. This is the first action filed by the United States and against the defendants based on or including the claims stated in the referenced action. Subsequent to filing this action, the Office of the United States Attorney learned of pending legislation, H.B. 2982 and S. 2692, which if passed would resolve the controversy presented by this action, as well as other similar disputes. As a result of the pendency of these Congressional Bills, the Secretary of Agriculture, together with the Department of Justice have entered into a moratorium regarding litigation involving these matters. The undersigned believes that it is in the best interests of the parties and of judicial economy that this matter be dismissed

without prejudice pending attempts for legislative resolution.

ROBERT N. MILLER
United States Attorney

By: HENRY L. SOLANO
Assistant U.S. Attorney
1200 Federal Building
Drawer 3615
Denver, CO 80294
(303) 844-2064

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of June, 1984, a copy of the foregoing NOTICE OF DISMISSAL WITHOUT PREJUDICE was mailed, postage prepaid, to:

Kenneth Balcomb, Esq.
Drawer 790
Glenwood Springs, CO 81601

Dorothy Salvatore
Office of the U.S. Attorney

(Formerly D.C. Form No. 4 Rev. (1-65))

SUMMONS IN A CIVIL ACTION

United States District Court

FOR THE

District of Colorado

CIVIL ACTION FILE NO. 84 - - 1121

UNITED STATES OF AMERICA,

Plaintiff

v.

DAN KNOTT,
DORIS KNOTT,
DOUGLAS R. JONES, and
THE KNOTT LAND & LIVESTOCK. CO., INC.,

Defendants.

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon HENRY L. SOLANO, Assistant U.S. Attorney

plaintiff's attorney , whose address 1200 Federal Building, Drawer 3615, Denver, CO 80294

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES R. MANSPEAKER
Clerk of Court.

Deputy Clerk.

Date: JUN 1 1984

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 84- -1121

84 JUN 1 P3:15

DEP. CLK

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAN KNOTT,
DORIS KNOTT,
DOUGLAS R. JONES, and
THE KNOTT LAND & LIVESTOCK CO., INC.

Defendants.

COMPLAINT

The United States of America, through the Office of the United States Attorney, District of Colorado, for its cause of action alleges:

I.

This is a civil action brought by the United States for declaratory and injunctive relief.

II.

Jurisdiction is conferred upon this court by 28 U.S.C. § 1345, and 28 U.S.C. § 2201.

III.

Plaintiff is the owner of and is entitled to exclusive possession of certain real property located within Routt

National Forest in Routt and Rio Blanco Counties in Colorado. These lands are:

T. 3N., R. 86 W., 6th P.M.

Part of Section: 18

T. 3 N., R. 87 W., 6th P.M.

Part of Section: 13

Part of Section: 24

The land is hereafter referred to as the "subject land."

IV.

The Secretary of Agriculture has authority pursuant to 16 U.S.C. § 551 to "make such rules and regulations" regarding the National Forests "as will insure the objects of such reservations, namely to regulate their occupancy and use to preserve the forests thereon from destruction."

V.

The Secretary of Agriculture has issued regulations pursuant to 16 U.S.C. § 551. The relevant regulations are codified in 36 C.F.R. Part 251 and 36 C.F.R. Part 261.

VI.

All uses of National Forest land, except temporary, non-commercial uses, must be authorized by a Special Use Permit, 36 C.F.R. § 251.50(a).

VII.

The defendants are Dan Knott, Doris Knott, The Knott Land & Livestock Co., Inc., and Douglas R. Jones; all residents of Oak Creek Colorado, and within the jurisdiction of this court. The defendants utilize a ditch across the plaintiff's land. The ditch is known variously as the "Trout Creek Ditch" and the "Male, Moore & Co. Ditch," and is referred to in this compliant as the subject ditch. The ditch transports water to the defendants' land.

VIII.

The subject ditch was apparently constructed no earlier than October 7, 1909.

IX.

Operating the ditch violates 36 C.F.R. § 261.10(a) which prohibits "Constructing, placing, or maintaining any kind of road, trail structure, fence, enclosure, communication equipment, or other improvement without a permit."

X.

The National Forest System lands upon which the subject ditch is located were reserved from the public domain pursuant to section 24 of the Act of March 3, 1891 (26 Stat. 1102) by a presidential proclamation dated October 16, 1891.

XI.

Since the ditch was constructed after the subject land was reserved for National Forest purposes, the ditch is not authorized by the Act of July 26, 1866 (14 Stat. 251).

The cited statute applies only to public domain lands administered by the Department of the Interior.

WHEREFORE, plaintiff prays for judgment against defendants as follows:

1. That an order issue declaring that defendants are illegally occupying the subject land in violation of applicable federal laws and regulations.

2. That the court issue a permanent injunction requiring defendants to vacate immediately the subject land now occupied, to remove therefrom all of the improvements and personal property and to clean up and rehabilitate the site to its natural state.

3. That the court issue a permanent injunction preventing defendants from occupying any portion of the Routt National Forest except in compliance with applicable laws and regulations of the United States and the National Forest Service.

4. That the court grant such further relief as it may deem appropriate.

ROBERT N. MILLER
United States Attorney

By: HENRY L. SOLANO
Assistant U.S. Attorney
1200 Federal Building
Drawer 3615
Denver, CO 80294
(303) 844-2064

Address of United States
UNITED STATES ATTORNEY
1200 Federal Office Building
Drawer 3615
Denver, CO 80294
303 844-2064

Senator WALLOP. Mr. Balcomb.

STATEMENT OF KENNETH BALCOMB, ATTORNEY, DELANY & BALCOMB, GLENWOOD SPRINGS, CO

Mr. BALCOMB. Mr. Chairman, first, I appreciate the opportunity to be here today to speak. My name is Kenneth Balcomb, and I am an attorney from Glenwood Springs, CO.

I practice law mostly in western Colorado where Glenwood Springs is located for quite a few more years than I would like to admit. In that practice, however, I have absorbed a considerable store of information about ranching, including irrigation and the related problems of the use of water in the West.

I am supposed to be here as an expert on water law in the West, and I dread that term, and I hope that the record doesn't show that I am such.

I am here likewise on behalf of the Colorado Cattlemen's Association and the various clients who have been having and have administrative and legal prcblems with the irrigation ditches on the National Forests. Included among those clients are the Knotts who have just testified.

I would like at this time to offer my statement in the record and kind of not read from it anymore but just ad lib in response to a few statements that were made by the Federal witnesses.

Senator WALLOP. By all means.

Mr. BALCOMB. Referred to in my statement, however, is a letter addressed to Senator Armstrong from Secretary Block dated October 1, 1982, I believe, and a letter to C. W. McMillian, executive vice president, National Cattlemen's Association, signed by John R. McGuire, then chief forester for the National Forest Service, which I think exemplifies the problems that the ranchers are facing, and I would like to have them made a part of the record.

Senator WALLOP. They will be.

Mr. BALCOMB. As the chairman well knows, the act of 1866 is the one that the U.S. Supreme Court has recognized separated land from water and created the introduction of the doctrine of prior appropriation of water in the West.

That very same act contained as a concluding part of the language set forth the language, ". . . and the right-of-way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed." In other words, that act tied together without any question the right to use the water and the way to get the water to the land.

The next act of any importance that involved this particular subject besides the one that says to include it in patents and that kind of thing is the act of 1891, and it was passed primarily because the National Forest System was being setup, and it was thought that the public land did not include public reservations.

The act of 1891 specifically uses the word grant. It provides for the grant of a right-of-way for conveyance of water if a map is filed with the Secretary of the Interior after 10 miles of which are completed.

In the case of the Knotts, only 2½ miles of ditch is on their property, and if a map was filed, we have been unable to find it, and

that explains in part the amendments suggested by Senator Armstrong and which is likely set forth in my written statement.

Mr. MacCleery said on page 9 of his statement, referring to the 1891 act, that it did require that a formal conveyance be issued upon compliance with the terms of the act.

That is just simply not true. That is the way they treat it, but it is simply not true. We have researched this problem now for 5 or 6 years when Mr. Knott and some of his neighbors first came to see us. We have examined every one of the acts which relate to rights-of-way. We have examined cases which relate to them, and we believe that both the 1866 and the 1891 acts were in existence as far as Forest Service reservations were concerned until the passage of FLPMA in 1976, and we believe that the cases out of both Federal and state courts bear that out to be a fact.

Mr. Edwards said at the conclusion of his statement, and the chairman made a few comments about it, both bills would in effect provide a public subsidy for private use of public lands and provide statutory relief for unauthorized users.

This is simply not true either. The purpose of the 1976 and—the 1866 and the 1891 law was to provide a subsidy to open up the West and development and to allow those people to have ranches and farms. As you well know, the Homestead law requires you to irrigate the land, to build a house, and to live on the land before you could actually make a purchase under your certificate of entry.

He further said thus penalizing those who conform to the pre-FLPMA right-of-way requirements. Well, we say in a legal sense that these people have conformed with the legal requirements. It is the agency that doesn't recognize the fact that that is the cause of their problem. The bill would also burden land management agencies with unnecessary procedural processes as you have noted.

If the bill passes with Senator Armstrong's proposed amendment, they won't have to do anything. They can just ignore the ditches because they will be there. What they have done in both of their statements is confuse the words "grant of right-of-way" with permit. They are leaving grant clear out of their language. They don't like to talk about grants because grant means something.

Laws passed about the same time as the law in 1866 allowed for grants for the purposes of establishing town size. Grants allowed settlers to build roads across public lands. Are they now saying that the Congress by passage of an act such as the 1976 FLPMA could revoke those grants? That is the position they are taking, and that is the position we object to.

I believe that the chairman is probably right. I question whether the Secretary can make the changes, some of the changes he suggested under FLPMA because he has a right to change the regulations, and if he changes them, they will change then the effect of the permit when he calls it on renewal.

He said our concern was the annual fee. We are concerned that the annual fee might increase. I am informed that the cattle will bring about 64 cents a pound this fall if we are lucky, and if the annual fee increases, who is going to increase the value of the calf? They just can't stand the ability of the agencies to increase the fee.

They say they will make them term permits, and I use that word again, and we say they are grants. They should have no right to make any changes. If you get a grant, you get a grant.

They say we will work on what conditions they can put in a permit. As you noted, that is what scares us to death. What are those conditions going to be if the Secretary can change them at will?

They say they will try to work something out on transferability. I question whether in the regulations they can do that.

We have already mentioned pre-existing rights, and they are giving a Federal Register notice they said. I have not seen it yet, but I am certainly going to look it up.

They intend to sit down with us. We have sat down with the Denver regional office, the forester there, with his assistant regional attorney there, with members of the Justice Department on two separate occasions, and they are in my words immovable. They have not agreed to anything. Now, of course, maybe they are getting scared of this legislation and would like to talk, but we don't believe they are going to come up with an acceptable permit.

They spoke something or other about the effect upon riparian rights. My understanding is that a riparian water user must limit his use or must be reasonable so as to do no damage to the riparian owner. I can't see what the bill does about the problem at all. That is a rule of law that cannot be violated.

And finally, on the maintenance problem and about the last thing that I want to mention, the difficulties that are going on between the land agencies and the water owner today arise from the lack of understanding I believe within the agencies themselves of the day-to-day and year-to-year problems of water users themselves. They do not seem to appreciate the fact that spring floods change the course of a stream, wash out headgates. Things have to be repaired. If a beaver blocks a ditch it runs over, all that type of thing. Under FLPMA I am satisfied that the agencies believe Congress has instructed them to ignore historical past practices in the West, and ignore actually the realities of life.

These rules generally speaking come out of Washington, and with all due respect to most of the people who run the agency, I doubt if they have ever even held a shovel in their hand, at least for the purpose of irrigating.

They want to pass new rules, and this manifests itself in just so many ways, innumerable ways. I couldn't even begin to list them, but I want to bring up a couple of examples.

In some cases they want to limit the use of a machine to clean a ditch which may be 6 or 8 feet wide with a 5 or 6 foot high bank. That is rather difficult to do with a shovel, but it is not too difficult to do with front-end machinery.

When something happens to make it necessary to repair the headgate or the ditch washes out because of a beaver or just because it overflows, they want you now to go to town and buy creosote timbers to fix or repair the situation. Why I don't know because the forest is covered with unused deadfall, unused green quick and aspen trees. They do just as well. I don't even know if Washington is aware of some of these little nitpicking practices that the rangers are imposing upon the ranchers in the West.

As I think I mentioned in my testimony and the written portion of it, the agencies are attempting to substitute their judgment which was gained in college in most cases for over 1,100 years of practical experience in the field, and I hope that Congress can see fit to clarify this situation by instruction to the agencies as to how they wish them to operate by passage of this legislation as Senator Armstrong proposes it be amended.

Thank you, sir.

[The prepared statement of Mr. Balcomb follows:]

STATEMENT MADE TO THE SUBCOMMITTEE ON PUBLIC LAND AND RESERVED WATER OF THE ENERGY AND NATURAL RESOURCES COMMITTEE OF THE UNITED STATES SENATE

June 28, 1984

Mr. Chairman and Members of the Subcommittee:

May I first express my appreciation for the opportunity to appear here today. My name is Kenneth Balcomb. I am an attorney from Glenwood Springs, Colorado. And, I have practiced law, mostly in Western Colorado, where Glenwood Springs is located, for more years than I like to admit. From that practice, however, I have absorbed a considerable store of information about ranching, including irrigation, and the related problems of the use of water in the West.

I am here today on behalf of the Colorado Cattlemen's Association and various clients who are having administrative and now legal problems with their irrigation ditches on public and National Forest lands. While I understand there are some 3,400 other landowners in the West who are similarly situated, unfortunately they are not my clients. I hope, nonetheless, the statements here today will resolve their problems with the land agencies, particularly the Department of Agriculture and the Department of the Interior, as well as the problems of those I here speak for.

On June 14, 1983, I appeared before a subcommittee of the Interior and Insular Affairs Committee of the House of Representatives to speak in support of H.R. 2982, a bill which is, having passed the House, I believe, at present,

likewise before this committee. I am here today to speak on S. 2692, a bill introduced by Senator Armstrong of Colorado. Both bills are designed to eliminate conflict between the land agencies, the Department of Agriculture and the Department of the Interior, and ranchers regarding long established irrigation ditches. Unfortunately, both bills, by expanding the cure of other similar ills, lose sight of their original purpose.

My clients are ranchers in the Steamboat Springs area. In common with all members of the Colorado Cattlemen's Association, they are far from wealthy. Two of them, Dan Knott and his son, Bernard Knott, are here today and have testified. They have ranched in the area for years. Their problems are similar to many ranchers and farmers in the Western states. There are some 50 ranchers in Jackson County, Colorado, with the same problems. The Forest Service is awaiting the outcome of the Knott case before proceeding against them. The other Forests in Colorado, and presumably the Forests throughout the West are awaiting to see what Congress does about this problem. A year ago, and just before the testimony was given on H.R. 2982, the Knotts first faced an administrative confrontation with the Forest Service. In no uncertain terms they were told they had to execute a permit with conditions totally incompatible to the concept of a grant, or be held to be in trespass. Today, the confrontation is in the courts. In light of the liti-

gation brought by the Justice Department the Knotts could well face bankruptcy unless the Congress acts now to cure the problem. The fact is that some of my clients are simply not financially positioned to fund the defense of a suit in Federal court. The complaint filed against the Knotts demands not only nonuse of the ditch but restoration of the land used as a ditch since 1911. Because of a prior agreement, not communicated to the U.S. Attorney in Denver, between Senator Armstrong and Secretary Block, the suits have been dismissed without prejudice to allow the current Congress time to cure the problem. To avoid future litigation, a proper bill is necessary, and a proper bill requires an understanding of the basic problem. If a proper bill does not pass it is clear litigation will be refiled.

The several recent court filings, though indicating where the agencies are going, do not clearly articulate the problem. The dispute is, however, clearly articulated in two letters. One, dated April 8, 1977, from the Chief Forester, John R. McGuire to the American National Cattlemen's Association, contains the following statement by Mr. McGuire: "When the facilities in use can be confirmed as being in existence prior to current authorities, then nothing further is required. However, in the event of subsequent change in ownership or in the facilities them-

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selves, then an appropriate permit or easement, issued subject to the later authorities, must be secured."

The second letter I refer you to, dated October 1, 1982, is from the Secretary of Agriculture, John R. Block to Senator William L. Armstrong of Colorado. Therein the Secretary stated, "Under provisions of the Federal Land Policy and Management Act (FLPMA) of 1976 and other earlier legislation, rights-of-way for private irrigation ditches and similar uses of Federal lands must have specific authorization . . .[t]he requirement for a rights-of-way permit does not affect any individual water rights." I have copies of both letters with me and would ask that they be made a part of the record of this hearing. Obviously neither letter recognizes a statutory grant of a right of way for the ditches.

As everyone on the Committee is aware, in the middle and late 1800's the United States Congress, by various land acquisition laws, made a determined effort to induce settlers to go west, to establish ranches and farms, and to reclaim that arid country for the benefit of the Nation as a whole. Water was essential for this endeavor and early on, as various U. S. Supreme Court cases have indicated, the Congress recognized the right of farmers to appropriate water arising on public land for the irrigation of arid

private lands. In 1866 there were no Forest Service reservations, thus the lands settled upon were public lands. The act of July 26, 1866 (43 U.S.C. §661), in pertinent part, provided:

> Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; . . . (emphasis supplied)

The statute was unquestionably passed in aid of the Congressional purpose of inducing the settlement of the West. The land use agencies today do not question the fact that this statute severed public land and the waters arising thereon. They recognize that under numerous court decisions, they are not free to so do. But, because of other legislation they feel compelled to distinguish between the water and the ditch necessary for its utilization, ignoring the fact that the two are treated as one in the 1866 statute. The 1866 statute not only granted the right to the use of water on public lands, but also granted a right-of-way on public lands to effectuate the use of the water. Without the latter, the former would be meaningless.

To further illustrate this point, while the homestead laws allowed entry on the public land for the purpose of acquiring title thereto, they required before patent could issue, agricultural use of the land, continuous occupancy, and the construction of a home. The Desert Land Act of 1877 increased the acreage which could be entered by an individual from the previous 160 acres to 320 acres, but still required irrigation of the land. All patents for lands purchased by such settlers were subject to the prior appropriation of water, and ditches and canals constructed in connection therewith. The water right and the ditch were thus inseparable.

Ever since 1866, the Congress and the courts have recognized state supremacy in the matter of the intrastate use of water. The land agencies established by Congress, however, seem to be unable to accept this fact. As the language of the 1866 Act clearly recognizes, the right to use water must be accompanied by a right to convey the water to the place of use. It could seem to be elementary that because of gravity that this is best done by the use of a ditch. The knowledge of this elementary fact has, however, not been included in the training of modern day Federal land use planners.

Both the 1966 Act and the subsequent 1891 Act grant to settlers a right of way for irrigation systems. There

is absolutely no question on this point. The grant was accepted by the settler by the construction of the ditch. Neither law imposed conditions, provided for fees, or, most importantly, provided for U.S. control of the ditch thereafter.

In 1891, in addition for providing for the reservation of lands for National Forests, Congress enlarged the 1866 Act to include irrigation systems on such reservations. The United States Supreme Court has held that the 1891 Act did not repeal the 1866 Act but was supplementary thereto. As noted above, under both acts, the construction of the ditch was the acceptance of the grant of a right of way on Federal land.

In the letter previously referred to from Chief Forester McGuire he states that the 1891 Act "required an easement from the Secretary of the Interior for all subsequent construction of irrigation works across public lands." His interpretation of the 1891 Act is simply not correct. Numerous decisions by the Department of the Interior indicate that the 1891 Act was a grant of right-of-way effective upon construction of the irrigation facility. And, even if reasonable conditions might be imposed on the exercise of the grant by the Secretary of the Interior, such conditions cannot have the effect of revoking the grant. Importantly, one such decision denied to the Secretary the right to deny a transfer.

Legislation between 1891 and 1901, without altering the status of irrigation ditches, provided procedures whereby rights-of-way for an ever increasing variety of other uses, such as electric transmission lines and telegraph lines, could be acquired. Such laws were expressly made permissive, thereby allowing the issuing agency to impose conditions, including the right to revoke for violation of conditions. The 1976 Federal Land Policy and Management Act (FLPMA) repealed, so far as National Forests are concerned, the 1866 and 1891 Acts applicable to the construction of irrigation ditches. Such repealer, however, cannot affect previous acceptance of the legislative grants made by the 1866 and 1891 Acts.

Generally speaking, what the Forest Service is saying to ranchers and farmers utilizing ditches originating on or crossing Forest lands is that if the ditch was built after the establishment of the particular Forest involved, the continued use thereof requires a permit or easement requiring the payment of fees, and containing other conditions, many extremely onerous. One of the most onerous is that referred to in Mr. McGuire's letter, which forbids transfer without the express approval of the Forest Service. Thus, the right to continue using the ditch even though previously in existence for many years is subject to the unilateral exercise of administrative fiat.

Though I am aware of numerous cases involving this situation, I wish again to refer only to that of one of my clients, Mr. Knott, as being a specific example. While all fact circumstances are not the same, they are generally similar enough that the one will suffice. Predecessors in interest to my clients (and often such predecessors are actually father or grandfather of the present owner) completed the involved ditch in about 1911. The water right goes back to 1909, and, so far as I am advised, the ditch has been maintained and the water right has been used every year from then to the present.

Beginning in the 1930's, National Forest personnel began to take an interest in this ditch (and also took an interest in other such ditches), and began issuing 10-year permits without charge. This was done even though the permitting authority, if it existed at all with regard to irrigation ditches, was in the Secretary of the Interior. Later permits issued by the Forest Service imposed a nominal charge, until, finally, in 1979, a permit was tendered to Mr. Knott for signature that contained conditions too onerous to overlook. Not only was the fee increased four times and, transfer without approval forbidden, but, inexplicably, one condition subjected the 1911 ditch and the 1909 water right granted by state law to the terms of the 1928 Boulder Canyon Project Act. Since Mr. Knott did

not submit, he was sued in trespass with the attendant expense of trial in the United States District Court unless Congress acts now. Dismissal of the instant charge of trespass avails them nothing if Congress does not act, since as noted the suit will be immediately refiled.

Cases in the Supreme Court of the United States resulting in the recognition of the separation of public land and water arising thereon under the 1866 Act largely involve either large companies, or states, or tax supported entities representing large numbers of people, all well able to pay the costs of such litigation. But in the case of irrigation ditches, the Forest Service is approaching each rancher individually in an effort to "divide and conquer." While we feel litigation would result in judgment in favor of our clients, they simply cannot afford the costs of such litigation. At the same time, however, they simply cannot live with the conditions proposed by the Forest Service. Contributing to this dilemma is the fact that most ranchers, including my clients, today mortgage their property to obtain annual operating expenses. No lender in his right mind would loan on irrigated land values if he was aware the right to use the ditch was not a part of his security. The solution for my clients, in common with many other persons in the same situation, is, therefore, with the Congress.

One of the most important facets of this problem is that under Colorado water law, you must use your water or you will lose it. The same is true of the law in most of the Western states. Thus, if you are denied the right to use your ditch, you will lose your water rights. Consequently, it is fair to say the demands of the land use agencies can lead to the loss of water rights granted by state law.

While legislation is imperative, it must nonetheless accomplish the intended purpose. Therefore, we suggest that (c)(1)(b) of S. 2692 be amended to read as follows:

> (B) Grants of rights-of-way made by this subsection are supplementary to, and not in lieu of, any other rights-of-way constructed under the authority of previous acts. Each previous grant of rights-of-way for water conveyance systems, notwithstanding any acceptance of permits, failure to record or lack of proof of prior grant, shall remain in full force and effect unless the holder thereof notifies the Secretary or Secretary of Agriculture, as appropriate, that he elects to be governed by the provisions of this subsection, in which case such previous grant shall be deemed to have been relinquished and shall terminate upon issuance of a new right-of-way. (Underscored language is in addition to that of the introduced bill).

The passage of S. 2692 with the suggested amendment will not create any new rights on either the National Forests

or the public lands of the United States. It merely recognizes long established rights pertaining to irrigation ditches, and makes clear to the land use agencies the original and continuing intent of Congress. It will enable thousands of small ranchers and farmers to continue the operation of their properties without fear of cancellation of their ditch rights. The agencies claim they are required to so act because of FLPMA, and their attempt to distinguish between water rights and ditch rights. To reiterate, the latter distinction is specious. A water right recognized by the agency is of little value to the owner if he has no means to get the water to the property to be irrigated.

It is interesting to note that the 1866 law in granting the right-of-way for ditches and canals, recognizes that the water right thereby made usable was to be acquired in accordance with "local customs, laws and decisions of courts." In Colorado, if a private landowner authorizes his neighbor to construct a ditch across his property, and the ditch is so constructed and used, the grant is immediate, and cannot be revoked. In view of what is perceived to be the purpose of the 1866 and 1891 laws, it should today be made absolutely clear to the land use agencies that the grant from the United States for ditches vested immediately upon the construction of the ditch if constructed prior to the passage of FLPMA.

Ranchers and farmers in the West depend upon their water supply for their livelihood. Usually, that water is diverted by means of a ditch, and the diversion point and part of the ditch is often on Federal land. Both the 1866 and the 1891 statutes anticipated this fact and granted a right of way for such purpose. Without such ditches, the farms and ranches could not have been settled. Many ditches actually effect a small transbasin diversion by conveying water from a water course with water to good farming land without a water course running through it. Without the ditches, the present operators face bankruptcy. This Nation can possibly afford to bankrupt lawyers, dry good salesmen, etc., but it cannot afford to bankrupt its ranchers and farmers. They are the beginning of the food chain which supplies everyone else.

Most of the foregoing parts of this statement have been devoted to water situations in the West as related to proposed Sec. (c)(1)(B), as proposed to be amended. However, subsection (4) causes us some concern because of the possibility of land agency misinterpretation. We understand, however, the portions of the section, about midway down, do not apply to old ditches recorded under this Act, but only to those constructed <u>after</u> the passage of the Act. And even then

nothing in that subsection, even as to new ditches gives the land use agency involved any right to impose a minimum stream flow in derogation of a water right granted by state law.

We are also aware that the committee members are aware of the erratic nature of the rivers and streams of the West. Spring snow melt and run off, and often even rain storms and cloudbursts, can change a stream or river channel drastically, washing out headgates and sections of ditches. It is our understanding that the repair and replacement of damages by acts of nature, even moving the headgate upstream as is allowed under Colorado law without loss of priority, or rebuilding diversion wings, or general maintenance would not constitute "new construction" but would be considered a part of the original grant.

With the amendment heretofore set out, and the recognition of our understandings above, we respectfully urge the passage of S. 2692.

I respectfully ask that my written statement be made part of the record.

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Honorable William L. Armstrong
United States Senate
Washington, DC 20510

Dear Senator Armstrong:

We appreciate the opportunity to respond to the concerns expressed in your August 3 letter regarding water rights and the fees charged for irrigation ditches permitted across National Forest System land in Colorado.

As you noted, the Administration has made its position clear with respect to Western water rights. Those rights are largely a matter determined by the respective States involved.

Under provisions of the Federal Land Policy and Management Act (FLPMA) of 1976 and other earlier legislation, rights-of-way for private irrigation ditches and similar uses of Federal lands must have specific authorization. Section 504 (g) of the Act requires an annual rental fee for such private uses of these lands.

As provided in FLPMA, the Forest Service special uses regulations (36 CFR 251.57) allow the authorized officer discretion to waive part or all of the fee, under certain circumstances, "when equitable and in the public interest." However, we do not believe it would be equitable or in the public interest to waive the fee for permitted irrigation ditches that are intended to exclusively serve private purposes.

We understand and appreciate your concern over this matter. However, the water rights in question do not exempt the ranchers and farmers from the permit and fee requirements for ditches crossing National Forest System lands. Conversely, the requirement for a right-of-way permit does not affect any individual water rights. Owners of ditches and water improvements elsewhere in the West generally have accepted these requirements. Even in Colorado, owners of a majority of the ditches that cross the National Forests have proper authorization and are paying appropriate fees. Proper authorization for the ditches provides protection for the ranchers and farmers, as well as being of benefit in the event of a sale of the property.

We appreciate your views and hope this helps you understand our position.

Sincerely,

/s/ John R. Block
Secretary

cc: CRO, LA, Secretary, R-2, Shepherd

FOREST SERVICE
P.O. Box 2417
Washington, D.C. 20013

2710
APR 8 1977

Mr. C.W. McMillan
Executive Vice President
American National Cattlemen's
Association
Suite 1020
425 13th Street
Washington, D.C. 20004

Dear Mr. McMillan:

This is in further response to the December 14, 1976, meeting with you and representatives of the Public Lands Council. You asked that we look into the need for special use permits for irrigation ditches across National Forest lands in Colorado. I provided the information concerning the other items discussed in our meeting in my letter of February 8. The complexity of this subject, however, has been more difficult to put in a condensed form. Thank you for your patience.

Prior to 1891, ditches could be constructed across the public domain without formal authorization. Once constructed, they were usually accorded easement status by local custom. Eventually, this custom was recognized in law by the Acts of July 26, 1866, and July 9, 1870. These Acts are coded under 43 USC 661, and apply only to unoccupied and unappropriated public domain. As western settlement grew, increasing conflicts occurred, and in 1891 the Irrigation and Drainage Act was passed. This Act did not extinguish rights acquired under the 1866 and 1870 Acts, but required an easement from the Secretary of the Interior for all subsequent construction of irrigation works across public lands. Soon thereafter, the National Forests were reserved from the public domain by Presidential proclamations and thus took on the stature of appropriated lands. Consequently, any irrigation works since constructed across National Forest land should have been authorized either by a Forest Service permit or an easement by the Secretary of the Interior. Therefore, ditches developed since 1891 without proper authorization have not established a legal right-of-way. Rights-of-way established prior to the time of the reservation, however, are recognized as having easement status.

2 Mr. C.W. McMillan

The Federal Land Policy and Management Act of 1976 (P.L. 94-579) repealed earlier statutes insofar as they pertain to rights-of-way across Federal lands. All water transmission facilities approved by the Secretaries of Agriculture or Interior must now be authorized in accordance with this new Law.

Congress, in the Fees and Charges Act of 1951, gave specific direction to Government agencies to collect fees for the use of Federal property. Budget messages of the Presidents as early as 1947 included statements supporting the policy that services or privileges provided by Federal agencies should be self-sustaining to the fullest extent possible. In 1964, the Bureau of the Budget, in response to the President's message to the Congress, completed its Natural Resources User Charges Study. The principles established in that study provided guidelines for the development of a system of user charges for Federal natural resource areas and projects. Specifically in arrangements for the general use of land resources, it established that the Government should recover fair market value for the use of Federal land resources. Also, where Agency review indicates that market values have changed, then agencies are required to update fees when current leases expire or when the leases provide for periodic adjustment. If provision for adjustment is not present in a lease, then it is to be included at the time of renewal. This premise was affirmed by the Congress in Section 102 of the Federal Land Policy and Management Act by its declaration of policy that "The United States receive fair market value for the use of the public lands and their resources unless otherwise provided for by statute."

For a number of years, our field officers have been reviewing water transmission facilities on a Service-wide basis. There is no intention to terminate or deny the use of legitimate facilities and we know of no instance where the Forest Service has done so. Our purpose is to ensure that the user complies with the resource protection obligations incident to that use and that the public receives a fair rental for the use of its lands. As the opportunities for review occur, Rangers are checking each situation carefully before determining that a Forest Service permit and fee is proper. When the facilities in use can be confirmed as being in existence prior to current authorities, then nothing further is required. However, in the event of subsequent change in ownership or in the facilities themselves, then an appropriate permit or easement, issued subject to the later authorities, must be secured. Similarly, when the change involves an established permit or easement, then appropriate revisions are made to bring that authorization up to present-day standards. We believe these occasions for change provide the most reasonable time for both parties to make needed adjustments and are within the intent of the Executive direction given.

[redacted] C.W. McMillan

It is also important to understand that the rights to water, which are granted by the States and the rights-of-way needed for transmission of that water, are not the same. The acquisition of a water right does not automatically convey a right to transport the water across the land of others. The water owner must acquire that right from the landowner, or be given the right by law. While some States do have such laws relative to private lands, they are not applicable to Federal lands.

It appears that the situation in Routt County developed as the result of a misunderstanding of current policy. That is, the updating of permits only when transfers, modifications, or requests for permits occur. Presumptions concerning the new Federal Land Management and Policy Act also contributed to the circumstances. A number of new permits were sent out and ranchers took the Supervisor's action to be an imposition of new policy. The Regional Forester has since reiterated earlier instructions to the Forest Supervisor. Any fear that the Forest Service, through its permit, might have some effect on the future value of ranch properties is not justified. The Forest Service is trying to authorize rights-of-way for ditches that now have a questionable right to cross the land. An unauthorized ditch is in a much more tenuous situation than one which is properly permitted and gives the owner access to departmental appeal procedures. This is because the permit does spell out the contractual relationship between the Forest Service and the user. We also believe the permit helps both parties to provide for proper ditch maintenance and for protection of the land. The payment of a fee has a binding affect on each.

We recognize that this situation has developed over 70 years and do not expect there will be easy acceptance of these changing circumstances, particularly the requirement for a fee. At this time, there are about 3,400 water transmission facilities authorized on National Forest lands. Approximately 1,800 now provide for payment of a fee for use of the land, and we anticipate that most of the remainder should be on a charge basis.

Ditch owners who still have questions should contact the Forest Supervisor in Steamboat Springs, Colorado. He will be more familiar with the specifics of their individual concerns and the administrative remedies available.

Sincerely,

for JOHN R. McGUIRE
Chief

Senator WALLOP. Thank you, Mr. Balcomb.
Mr. Broome.

STATEMENT OF STANDISH R. BROOME, COUNTY MANAGER, GARFIELD COUNTY, CO.

Mr. BROOME. Thank you, Mr. Chairman. My name is Stan Broome, the county manager of Garfield County, CO., the county seat being Lynwood Springs.

I appreciate the opportunity today to appear on behalf of my own Garfield County in endorsement of S. 2692, but also the associated governments of northwest Colorado who represent Garfield, Moffat, Rio Blanco, and Mesa Counties, and to further identify for the committee, that Club 20, an association of 20 western Colorado counties, also support the efforts of this legislation.

We have submitted a statement. In the interest of time I would like to just make one comment and we can let our statement stand.

The adage that we view in northwestern Colorado about Federal intervention if you will into our right of doing business and the established way as outlined so eloquently by Mr. Balcomb is if it's not broke, don't fix it, but unfortunately, it is broken.

In our opinion, in the opinion of the other local governments in northwest Colorado, the Forest Service and BLM are using the section 501 of FLPMA to intervene in the rights of not only the small ditch owners as you have heard today, but we also feel in the rights of the municipalities, the rights of the city and county of Denver operating through its board of water commissioners and other major diverters in order to have a say in the land use policies and positions of local government and State government in Colorado.

We specifically endorse the adoption of 2692 as presently outlined because we feel it does fix section 501 in the FLPMA Act.

Thank you.

[The prepared statement of Mr. Broome follows:]

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GARFIELD COUNTY **Board of County Commissioners**

FLAVEN J. CERISE
District I, Carbondale 81623
EUGENE (JIM) DRINKHOUSE
District II, Rifle 81650
LARRY VELASQUEZ
District III, Glenwood Springs 81601

COUNTY COURTHOUSE
109 8th Street P.O. Box 640
Glenwood Springs, Colorado 81602
Telephone: (303) 945-9158

S. R. (STAN) BROOME
County Manager

STATEMENT TO THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
S. 2692
STANDISH R. BROOME
COUNTY MANAGER
GARFIELD COUNTY, COLORADO

I am here on behalf of Garfield County, Colorado to endorse S. 2692. The Associated Governments of North West Colorado representing Garfield, Rio Blanco, Mesa and Moffat Counties have also asked that I convey their support of this legislation. Club 20, which represents the 20 Counties of western Colorado, has also endorsed the concept of this bill.

Three areas of specific interest to our County will be reinforced by enactment of this legislation.

1) Municipalities in Garfield County derive their water supplies in two ways — water infiltration from the rivers and ditch rights. This bill reinforces the municipality's ability to maintain and operate their systems with a minimum of federal agency interference.

2) Federal government intervention into the land use and water laws of the State must not happen. Ditch rights and on federal property must be treated in the same manner as those rights of fee landowners. The threat of federal intervention can have disasterous impacts on transmountain diversions — the life blood of the Colorado front range communities.

3) We support the intent of subsections IV and VII of this bill as they apply to the areas of federal cost sharing in the NEPA process as required on new permits and the concern of minimum stream flow below the point of diversion for the purpose of maintaining a viable fish habitat.

   Federal agencies must bear the costs associated with their decisions affecting private or local government ditch rights including the costs of Environmental Impact Statements. Any loss of water values associated with minimum stream flow requirements impaired by Federal action have to be either replaced in kind or purchased by the federal agency.

Garfield County urges your favorable action on S. 2692 as presented at this hearing. Thank you for your attention to our interests.

Senator WALLOP. Thank you, Mr. Broome. Let me just say to you as a panel that I appreciate and understand some of what you have been going through, although I haven't had a legal action served on me. I haven't been confronted with it to my ranch in Wyoming. I don't have a small ditch diversion, but clearly from two of the reservoirs from which my water comes there are major diversions that take place from one drainage to another, and we have witnessed some of these kind of things. We have in fact on the impoundment itself a similar type of problem.

The admininstration does have a couple of points which I think are legitimate, but I think that the pressure needs to be maintained. We are going to ask to have some or all of you, especially Mr. Balcomb, to be part of a discussion with the land management agencies with very specific ways to resolve the problems that you have described.

Mr. BALCOMB. May I say something about that, Mr. Chairman? As I indicated to you, we have already had several meetings with them.

Senator WALLOP. This is something that we would put up under the auspices of the committee. The pressure that we have is the bill.

Mr. BALCOMB. My biggest problem right now is the question of time. I understand you have 6 legislative weeks of activity left in this session. The agreement between the Senator and the Secretary will expire at the end of this session unless it can be extended and unless maybe this committee could get them to agree to extend it.

Senator WALLOP. That might be one part of it.

Mr. BALCOMB. But if it doesn't happen, we have their absolute promise they will immediately reserve the Federal cases, and I think there are either 4 or 5 already filed. There are something like 35 or 40 threatened in the northern part of Colorado which adjoins the head of the North Platte River. We are having all kinds of problems. Right now it is only on the National Forest and maybe one forest in southwestern Colorado. I asked the White River supervisor which is the largest forest in the world I believe, what he was doing about it, and he said we are supposed to be doing something about it but we are going to wait and see what happens, and I believe that is the position of the other 10 or 12 or 13 forests in Colorado.

Senator WALLOP. I appreciate the problems and I hope that you understand the subcommittee is inherently on your side in this thing, not the least of the reasons is because I am one of you.

Mr. DAN KNOTT. Could I add something, Mr. Chairman? I don't believe we are asking for anything other than what we have already had or were supposed to have when those ditches and homesteads were taken up in the early 1900's up to 1950.

Senator WALLOP. I don't quarrel with that. The problem that we have, and Mr. Balcomb can explain it to you better than I can, is to prove that it is going to be not only expensive but time consuming. If we can resolve it in a way that is satisfactory without going through the legal test of it, it will save you money and time and a good deal of hostility that develops between you and the Government anyway, so that is what we are trying to get at. Somebody is going to have to prove it in court, and I would suggest the Govern-

ment has got a little bit more money than the Colorado Cattlemen's Association and will sustain that burden on you for a long time.

If we can prove it by enactment of this or a major portion of it, and relieve the question that may arise, the legal question that may arise—I tend to agree with Mr. Balcomb with the grant versus permit kind of thing, but the fact is it is just going to cost a bunch and take a lot of time to prove that. If we can resolve it without doing that, it will save everybody's time and money.

The question arises over what did the FLPMA actually do? It is going to be up to you and us to prove in court that it didn't do what we have been saying it didn't do, and that takes a long time.

What I am trying to do is get at a resolution of this that will give you the security that you need, and God knows if water rights has any meaning at all it loses it if there isn't certainty to it.

Mr. DAN KNOTT. Yes.

Senator WALLOP. And that's all I am saying. I understand the problem that you have. I also understand the time constraints, but that exists with or without 6 weeks. We still have to get something done, and under a threat of veto even that time constraint disappears, so we will be working at several levels, one, to get a clear understanding of the intention of that if it is necessary, and two, to try to get it resolved.

I appreciate your being here. I especially appreciate your characterization, Mr. Broome, which I believe exists not only in these issues but in a number of others. They are trying to enter into local land management decisions that are off Federal domain, and it's a pain in the democratic symbol for all of us to try to deal with that, and it occurs at more than this level I think you would agree.

Mr. BROOME. I appreciate that.

Senator WALLOP. So I understand what we are trying to get at, and I think we probably can find a way to do it, but we will need your help in the process.

Thank you all very much. The last witness, and I appreciate his patience, is Mr. John Satagaj, staff counsel and director of government affairs of the American Association of Nurserymen.

STATEMENT OF JOHN S. SATAGAJ, DIRECTOR OF GOVERNMENT AFFAIRS AND STAFF COUNSEL, AMERICAN ASSOCIATION OF NURSERYMEN, INC.

Mr. SATAGAJ. Good morning, Mr. Chairman. I will be brief because I know you have your vote. You have my full statement for the record.

I am here on behalf of the American Association of Nurserymen, and we are opposed to H.R. 2838. Specifically, we object to the creation of a program that would create a free planting program in public areas such as school yards, highways, and parks.

This is something we have experienced for nearly 40 years, problems with the Government competing with our nurseries, and basically there are three reasons why we oppose this bill.

The first reason is that our industry is a very competitive one. It is a type of organization where someone can come in and start a small business without too much experience, but because of this

competitive feature, we have very thin profit margins, and market share is very important to us, and this bill just arbitrarily preempts part of our market.

Our people do sell to these schools, highways, so forth. It is just the type of market we have, and we can't give it up.

The second reason is that this program is going to be difficult to manage and administer. Within the bill there are two terms—nonprofit and public lands. They are very ambiguous and can mean a lot of things. It is going to be very difficult for the Forest Service to ensure compliance with this program.

We know from our experience over the 30 to 40 years that when the Forest Service proposes a program of this nature, in theory none of them compete with the private sector. In reality, they all do. We have come back several times over the period of that time to ask for relief from these programs because they set out the theory that they will not compete and then they do.

Examples are with the soil conservation district, we had to come back in the fifties to get specific legislation because the soil conservation districts which were originally prohibited from competing with the private sector were doing so, and we had to get specific language to that effect prohibiting it.

The third reason we are opposed to this program is the fact that it is really a symptom of a much greater problem, and that is that the Federal Government is in competition with nurseries. We simply believe the Government should not be in the production business to begin with, and if they were not, they would not have overproduction problems, so I think we have to look at that problem rather than what to do with the production.

Those basically are our three major objections to the program. We have fought this, as I said, for a long time. In fact, for this association, which was started in around 1900, one of the founding premises was to defeat Government competition, and so let me state that while we understand the good intentions behind this legislation, we just feel that the adverse consequences to our membership and to the economy in general far outweigh the benefits of it, so therefore, we oppose the bill, and thank you, Mr. Chairman, for the opportunity to be here today to present our views.

[The prepared statement of Mr. Satagaj follows:]

American Association of Nurserymen, Inc.
1250 I Street, N.W., Suite 500, Washington, D.C. 20005 (202) 789-2900

Testimony of
John S. Satagaj
American Association of Nurserymen
before the
Subcommittee on
Public Lands and Reserved Water
U.S. Senate Committee
on
Energy and Natural Resources

June 28, 1984

My name is John S. Satagaj and I am Director of Governmental Affairs and Staff Counsel for the American Association of Nurserymen (AAN). AAN represents over 3,000 firms in the nursery industry including growers, garden centers, landscape firms and mailorder nurseries. I am also here today in behalf of the Oregon Association of Nurserymen.

We are opposed to H.R. 2838 as passed by the House of Representatives. Specifically, we object to the creation of a program that will provide "free" trees for planting in public areas such as schoolyards, highways and parks. This proposal is just the latest in the government's continual efforts, dating back to 1908, to intrude in the private marketplace.

We are proud of the fact that our industry is a very competitive one where many individuals have the opportunity to start and own a small business. Because of this competitive environment, profit margins are thin and each piece of market share is won through honest sweat and perseverance. Understandably, no one would willingly give up a portion of their market share, yet, this bill would, in effect, arbitrarily pre-empt a portion of our natural market. Public institutions such as schools, parks and highways are part of our market and we would quickly lose that business when confronted with a "competitor" who gives away the product. With the emphasis we place on the importance of business, particularly

small business, to our economy and job creation, we do not believe a "giveaway" program in competition with the private sector can be justified.

Second, this program will be difficult to manage and administer and we are certain that these seedlings will ultimately find their way into the stream of commerce. The terms "non-profit" and "public lands" are broad in scope and it would be impossible for the Forest Service to ensure full compliance with the terms of the program. We know from harsh experience that there is a wide gap between theory and practice. For example, in theory, soil conservation districts were prohibited from selling plant material in competition with the private sector. Yet they did and it was necessary for us to fight for tighter restrictions on their activities. However, to this day, we continue to receive periodic complaints about Districts selling to the general public. Once the government has its foot in the door, it is difficult to control a program.

Most importantly, this program is the symptom of a much greater problem. We believe the government should not be in the nursery production business. The private sector could supply all of the federal government's needs and do so at a savings to the taxpayers. If the government placed more reliance on the private sector, there would be no over production and we would not be faced with this dilemma. The federal government produces 150 million seedings, and state, local and other quasi-governmental entities such as soil conservation districts produce another 800 million. This is a substantial and important market. Robert Eastman, President of Western Maine Nurseries testified before the Senate Committee on Small Business on June 6, 1984 on government competition with nurseries. Attached is a copy of his statement.

We have been struggling with government competition on and off since 1908. In the 1950's the U.S. House of Representatives conducted some hearings on the general subject of government competition and concluded that we must do something to put a halt to this trend. The committee stated: "Genuine efforts should be exerted to encourage rather than discourage industry to handle the Government's

business. A strange contradiction exists where the Government gives lip service to small business and then re-enters into unfair competition with it."

We believe that, as a nation and government, we sometimes forget the philosophy of government as envisioned by our founding fathers. It was Thomas Jefferson who said: "The true theory of our Constitution is surely the wisest and best, that the states are independent as to everything within themselves, and united as to everything respecting foreign nations. Let the General Government be reduced to foreign concerns only, and let our affairs be disentangled from those of all other nations, except as to commerce, which the merchants will manage the better, the more they are left free to manage for themselves, and our General Government may be reduced to a very simple organization, and a very inexpensive one; a few plain duties to be performed by a few servants." (emphasis added)

Finally, attached you will find a representative sample of correspondence from our members on this subject.

In conclusion, let me state that we understand the good intentions behind this legislation, however, we feel the adverse consequences of the bill for our members and the economy in general outweigh the benefits. We, therefore, respectfully urge you to oppose H.R. 2838.

I would be happy to answer any questions you may have.

OF NURSERYMEN

RECEIVED

February 20, 1984

Senator Mark O. Hatfield
322 Hart Office Building
Washington, DC 20510

Dear Senator Hatfield:

I understand the H.R. 2838 will be heard by the Senate Energy & Natural Resources Committee. This resolution is in direct conflict to the third largest agricultural commodity in the State of Oregon. We, in the Nursery Industry, have had an extremely difficult time surviving financially the last few years without unfair competition from the Federal Government. I would urge you to do everything in your power to see that H.R. 2838 is defeated.

Sincrely,

Jack Long
J & L Nursery Co.

AAN

J & L Nursery Co.
6551 Sclem Road N.E.
Silverton, OR 97381
(503) 873-6566

Millane Nurseries
"Trees Since 1929"
& Tree Experts, Inc.

684 Main Street
Cromwell, Conn. 06416
Tel. (203) 635-5500

February 15, 1984

ASSOCIATION OF NURSERYMEN
RECEIVED
1984

Senator Lowell P. Weicker, Jr.
450 Main Street
Hartford, Connecticut

Dear Senator Weicker:

The nursery industry is a very large part of the agricultural community in and around the Hartford area. House bill #2838 would permit the Forest Service to donate overproduction of Federal nurseries to non-profit groups to plant on Federal, state, and local property like parks, highways, and schoolyards.

We are opposed to this sort of activity. We do not feel that government involvement is necessary when a private sector can supply the goods. The government should not even have production nurseries since private sectors are capable of providing all necessary stock.

Millane Nurseries is definitely against the passage of Bill #2838 as is the American Association of Nurserymen and the Connecticut Nurserymen's Association.

Very truly yours,

C.A. Millane
President

CAM:sk

cc: American Association of Nurserymen

KNUPPER NURSERY & FLORIST

A GROWING PLACE

March 22, 1984

Senator Charles Percy
600 East Monroe/Room 227
Springfield, IL 62701

Subject: HR 2838 Federal Nursery Tree Giveaway.
Requested Action: Defeat Bill.

Dear Senator Percy:

It has come to our attention that HR2838 would permit the federal nurseries to give away surplus trees grown for reforestation programs to non-profit groups for planting on local, state, or federal lands.

It has been observed that government-grown plants often end up in other uses than the authorized ones. This allows for unfair competition. We are competing now with trees given away by the state government and now being sold by a local landscaper.

Aside from this, we feel the government should not be in the tree-growing business at all. The government buys trucks, cars, and office equipment from businesses. Why not encourage the private sector to produce the needed plants? Our industry does have the capability now to produce all the tree seedlings the federal government requires.

We don't ask the government to buy our surplus production like the dairy industry does. We destroy or sell our surpluses. Is it too much to ask the government to not compete at below cost prices with tax dollars?

I urge you to work to defeat HR2838 - a tree "giveaway" and to support measures to stop tree production by the government that is not related to research.

We operate a nursery business and are proud of the jobs and products we produce. We respectfully ask for your help.

Sincerely,

John Heaton

John Heaton, Manager
Knupper Nursery
1801 N. Rand Rd.
Palatine, IL 60074

1801 N. RAND ROAD PALATINE IL 60074
PHONE NURSERY (312) 359-1080 FLORIST (312) 359-1105

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RECEIVED 1984

February 15, 1984

Senator Howard Metzenbaum
405 Russell Senate Office Bldg.
Washington, D.C. 20515

Dear Senator Metzenbaum:

This letter is concerning my suggestion for you to oppose passage of H.R. 2838 which allows donation of over production of federal nurseries to parks, highways, schools etc. I believe you are on the Senate Energy and Natural Resourse Committee which has this bill currently under study and the following reasons are why it should not move out of your committee:

1. Public institutions are part of our market.
2. The program will be difficult to administer and monitor and seedlings will find their way out into other commerce.
3. I oppose governmental involvement when the private business sector can provide these seedlings at a reasonable cost.

Your consideration in this matter will be appreciated.

Sincerely,

Dick Gooding
V. Pres. & Gen. Mgr.

John Zelenka EVERGREEN NURSERY, INC.
16127 Winans St., Grand Haven, Michigan 49417 • 616/842-1367

February 8, 1984

Honorable Donald Riegle, Jr.
U.S. Senator
253 Russell Senate Office Building
Washington, DC 20510

Dear Senator Riegle:

It has been called to our attention that the House of Representatives has passed HR 2838 and it has now gone to the Senate Energy and Natural Resource Committee. We are very distressed in the House passage of this 'Bill' and would urge your assistance in having this Bill not reported out of Committee. As I understand the Bill which passed the House, any surplus production from Federal Nurseries can be planted on local properties such as parks, highways and schoolyards to non-profit groups. This is a very discriminatory Bill and if the Forest Service over-produces let them destroy plants just like we do in the private sector. The people that would be available to these surplus plants are part of my industry's market. I also cannot see how in the world this procedure will ever be administered and undoubtly these plants will find their way into other areas of our market. The private sector, our nursery along with many other nurseries in Michigan, have the capabilities to provide the plant material that the government is growing.

Senator, we are very distressed about this Bill and trust that you will do everything in your power to keep it in the committee and not allow it to arrive on the Senate floor. Anything you can do to assist us will be deeply appreciated.

Ralph Shugert

Ralph Shugert
Staff Horticulturist

alk

cc: Rich Brolick
Paul Zelenka
American Association of Nurserymen

AMERICAN NURSERY PRODUCTS, INC.

P.O. BOX 768
WEST HIGHWAY 51
TAHLEQUAH, OKLAHOMA 74464

(918) 456-0703

February 13, 1984

The Honorable Don Nickles
United States Senate
Washington, D. C. 20005

Dear Senator Nickles:

House Bill #2838 deals with government agencies giving away surplus seedlings in competition with the nursery industry. We are having a tough enough time without free government plants. Please vote to kill this bill and get the U. S. Government out of the nursery business. Thanks for your help.

Sincerely,

Bob R. Berry
President

/beh

LAWYER NURSERY, INC.

950 Highway 200 West
Plains, Montana, USA
59859

TEL: (406) 826-3881
TLX: 31-9547

AMERICAN ASSOCIATION OF NURSERYMEN
RECEIVED
FEB - 9 1984

February 6, 1984

COPY

Senator John Melcher
Senate Office Building
Washington, D.C.

Dear Senator Melcher:

Please work to defeat HR 2838 now in committee. Please do not report it out of committee. The Government should not even be in the Nursery business much less give away it's subsidized products.

I have traveled considerably around the world visiting Forestry and Ecological nurseries. In all of the Communist-Socialist countries the harvesting of seed, growing of seedlings and cuttings for reforestation or ecology is completely in the hands of the Government.

In all of the free world (excepting the USA, if that is free) it is in the hands of private enterprise. Especially in the free countries like France and Germany it is fair to say that the major support of the nursery industry comes from growing for reforestation. In France very large nurseries like Naudet produce almost entirely for reforestation. The state produces little or nothing. In Germany such large private nurseries as Pein and Pein produce only for reforestation.

In the USSR, Poland and throughout eastern Europe the production of seedlings is entirely in the hands of the Kommisars.

Although Forestry in the Socialist-Communist countries is interesting, forestry in the free world is more advanced and the more freedom, the more advanced is this science.

We in the nursery profession keep hearing that old canard that the American nurseryman cannot produce the plants needed. And that they are not producing them. The answer to that is: which came first, the chicken or the egg? We'll produce the tree and shrub seedlings fast enough, but mother nature takes a year or two or three for them to grow to transplanting size and we are not going to start as long as the Government nurseries have millions in production overshadowing the market. For us to do so would be economic suicide.

Laws have been passed to supposedly prevent Government nurseries from competing with private nurseries. These laws have been a total failure and have often had very unexpected results. The Government often produces too many plants. This is unavoid-

able. If they are forbidden to sell or distribute them then there is a terrible economic waste. Sometimes this even gets comical. I could tell 100 funny stories, but do not wish to offend my good friends and colleagues in the Forest Service.

It is the old, old story, to wit: monopoly and/or subsidized business drives private enterprise out and in the end, becomes intolerable and inefficient by removing the profit motive. It's oats that make the horse go!

Sincerely,

David A. Lawyer

DAL:ts

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February 24, 1984

OF NURSERYMEN
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Senator John W. Warner
U. S. Senate
Washington, D.C. 20510

Dear John:

I am writing to you today to ask for your support in opposing the House bill HR 2838 which was passed and permits Forest Service to donate over-production of Federal nurseries to non-profit groups to plant on Federal, state, and local property like parks, highways, and schoolyards.

I feel this is Government competition resurfacing. I see three problems with the bill: 1. Public institutions are part of my market. 2. Will be difficult to administer and monitor program and seedlings will find way into other commerce. 3. I am opposed to government involvement when private sector can provide. Government shouldn't even have production nurseries since private sector is capable of providing needed stock.

John, I feel the private sector is having enough problems trying to make ends meet without the government giving away - free of charge - over-procution of plants to my potential customers in direct competition with the nursery industry. I would appreciate any effort on your part to help kill this bill and committee.

Sincerely,

WAYNESBORO NURSERIES, INC.

Ray Quillen
Nursery Manager

RQ/jfb

WE EXERCISE GREATEST CARE TO KEEP OUR VARIETIES PURE AND TRUE TO NAME AND HOLD OURSELVES IN READINESS AT ALL TIMES TO REPLACE ON PROPER PROOF ALL STOCK THAT MAY PROVE OTHERWISE OR REFUND AMOUNT PAID, BUT IT'S MUTUALLY AGREED BETWEEN THE PURCHASER AND OURSELVES THAT WE SHALL NOT BE LIABLE FOR ANY AMOUNT GREATER THAN THE ORIGINAL PRICE

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February 7, 1984

Senator Paula Hawkins
United States Senate
Washington, D.C.

Dear Senator Hawkins,

We would like to register a resounding "NO" vote for a Bill now pending in the U.S. Senate.

It is H.R. #2838, which recently passed the House of Representatives, concerning the Forestry Services "Giving Away" trees to various non-profit groups for planting on public lands.

1.) The public sector is just as much a part of our business as the private sector is and as such, the Government should not be using our tax money or our 75 employees tax money to give away plants to anyone!

2.) Giving the plants away cheapens the product in the consumers eyes and makes it hard for one to make a decent living in the plant business.

3.) This law will be very hard to enforce and follow-up on.

4.) And finally, and most importantly, the Federal Government should not be in the business of growing trees at all. We believe we need the trees for reforestation projects as much as anyone, but in these days of Trillion Dollar deficits we're sure the private sector could do a better job for less money then the U.S. Government.

14 AVENUE OF THE FLOWERS
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GOLBY GARDEN CENTER - ONECO
756-6573

HOOGENDOORN NURSERIES, INC.
WHOLESALE
408 TURNER ROAD NEWPORT, R. I. 02840
TEL. AREA CODE 401 847-3408

MEMBER OF:
AMERICAN ASSN. OF NURSERYMEN
INT'L PLANT PROPAGATORS' SOCIETY, Inc.
N. E. NURSERYMEN'S ASSN.
R. I. NURSERYMEN'S ASSN.

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February 21, 1984

C-O-P-Y

Dear Senator Chafee:

The House of Representatives has passed H.R. 2838 which permits Forest Service to donate overproduction of Federal nurseries to non-profit groups to plant on Federal, state and local property like parks, highways, schoolyards, etc.

I am a commercial nurseryman and operate a wholesale nursery in Middletown, Rhode Island. Many other nurseries (large and small) are located in the immediate area as well as many other locations throughout Rhode Island.

I am very strongly opposed to government production nurseries since our industry is more than capable of providing needed nursery stock.

HOOGENDOORN NURSERIES, INC.
WHOLESALE
408 TURNER ROAD NEWPORT, R. I. 02840
TEL. AREA CODE 401 847-3405

MEMBER OF:
AMERICAN ASSN. OF NURSERYMEN
INT'L PLANT PROPAGATORS' SOCIETY, Inc.
N. E. NURSERYMEN'S ASSN.
R. I. NURSERYMEN'S ASSN.

75 ACRES
GENERAL LINE OF EVERGREENS AND SHRUBS
SPECIALIZING IN LINING-OUT STOCK AND NOVELTIES
ESTABLISHED 1899

The public institutions which will more than likely receive many overproduced items are part of our market. This program will be difficult to administer and monitor with an end result of seedlings finding their way into other commerce. As I stated earlier, I am strongly opposed to government involvement in an area when the private sector can provide.

I strongly suggest that you take my thoughts into consideration and oppose the passage of H.R. 2838. I would urge it not be reported out of committee.

Thankyou.

Sincerely,

Dixon P. Hoogendoorn

Dixon P. Hoogendoorn
Hoogendoorn Nurseries, Inc.

American Association of Nurserymen, Inc.
1250 I Street, N.W., Suite 500, Washington, D.C. 20005 (202) 789-2900

Testimony of
Robert H. Eastman
President, Western Maine Nurseries
and
Chairman, Government Nursery Production Committee
American Association of Nurserymen
on
S.1746 "The Freedom from Government Competition Act"
before
The Committee on Small Business
of
The U.S. Senate
June 6, 1984

On behalf of the American Association of Nurserymen (AAN), I wish to submit the following testimony regarding S.1746, "The Freedom from Government Competition Act."

My name is Robert H. Eastman, President of Western Maine Nurseries, Inc., Fryeburg, Maine. I am here to testify today as a small business owner who has experienced the frustration of government competition and as a long standing member of the American Association of Nurserymen. Western Maine Nurseries is a small two family business, located on the Maine-New Hampshire border, currently producing upwards of six million bare root and containerized seedlings and transplants per year for sale. We are entering our 61st year, supplying the needs of homeowners, pulp and paper companies, Christmas tree growers, landscapers, garden centers, wholesale and retail nurseries, as well as government planting projects. Western Maine Nurseries operates on nearly 300 acres with five greenhouses used for containerized evergreen seedlings, capable of producing two to two-and-a-half-million plants annually.

Discover the Pleasure of Plants

I have served on the AAN's Government Nursery Production Committee for many years, and the problem of government competition seems to have raised its head more often in recent years. As much as we have tried to avoid it, there still seems to be a large vacuum between the Forest Service and private enterprise regarding production of trees and planting stock.

AAN is a trade association representing over 3,000 firms involved in the nursery industry including wholesale growers, retail nurseries, garden centers, landscape and mailorder firms. AAN has a proud heritage of representing the interests of this industry for 109 years. I mention this fact because, unfortunately, this issue in one form or another, has been with us for nearly that long.

From a philosophical point of view, as well as a practical matter, AAN is opposed to government competition with business. Federal involvement in nursery production dates back to 1908 and AAN files indicate active and serious dialogue on this matter as early as the 1930's. I have attached a recent Wall Street Journal article which chronicles some of this history.

One of our industries primary problems at the Federal level is with the 13 nurseries operated by the U.S. Forest Service. These nurseries produce 146.49 million tree seedlings primarily for reforestation purposes. The Service does procure a modest amount of seedlings from private sources to augment the production from the federal nurseries when demand exceeds the capacity of the federal nurseries.

Over the years we have tried to encourage - with only fair results - increased planting by the pulp and paper industry and the Forest Service. We are located near the White Mountain National Forest where much clear cutting has been done. Experiments have been carried out by aerial seeding, hand planting and natural regeneration with few results. Little or no work with chemical suppression of non-marketable weeds has been carried out because the Forest Service claims it is too expensive.

If enough thought and planning for the future were done, it would be found that careful, planned reforestation, using reasonable cultural practices and the appropriate size and type of tree, is the only method of adequately maintaining our forests. The Federal government should be the leader in this area, not the follower.

Currently, private landowners have learned by experience that it takes good cutting and cultural practices, as well as good planting stock, to achieve adequate regeneration of desired species. Good planting stock doesn't just happen; it takes two to four years of careful propagation under optimum conditions to produce the stock necessary for forest out-planting.

My experience with the Forest Service is that they expect private nurseries to have this stock ready and available any time without prior notice. When the stock is not available immediately, they claim private enterprise isn't capable of producing sufficient supplies of planting stocks for their needs. This isn't the case at all. They have not communicated with the commercial growers in sufficient time to allow them to grow the required stock.

Many times it takes a year to locate the right seed, and then only if there is a seed crop. Nurserymen need two years in the seedbed, at least, and sometimes three, to produce a seedling that will survive out-planting conditions. A containerized seedling or tubling can be produced in about half this time with a strong root system and enough top growth to assure survival, but the Federal government contends they cannot afford the cost of such seedlings.

The government does not take into account the various costs commercial growers must include in arriving at a fair market cost, i.e. taxes, overhead, labor, material, irrigation, etc. I have heard it said that the Forest Service can set up a nursery quickly and produce seedlings. What the Forest Service doesn't admit to, however, is that they do this with taxpayer's money and, frequently, on federally - owned lands. Consequently, their cost accounting does not accurately reflect the costs that private enterprise must include,

nor do they figure in the profit margin commercial growers must have in order to survive.

Although Forest Service nurseries already exist, knowledgeable personnel are not readily available to operate and manage these nurseries effectively. At times when required stock was ready for planting, the personnel needed to plant it would not be available or the sites would not even be ready for plantings.

With proper planning and cooperation, the private sector could produce seedlings of high quality at a reduced cost to the government when all cost factors are taken into consideration. If bloated Federal payrolls were cut and cost-effective management practices applied, the Forest Service's and other Federal agencies' budgets could be drastically reduced. Unfortunately, very few policy makers have the foresight to realize this.

Examples of ineffective management are particularly obvious in the areas of capital expenditures and personnel. If a manager decides he needs a new piece of equipment or additional help, he simply writes up a justification and, generally, gets his wish.

Poor planning seems to be an ongoing situation. This past fall a private contractor was hired to hand plant a national forest cutover. He was provided with the trees, but no planting tools. When he inquired, he was told to use a stick to make the planting hole. The contractor was aware of our operation and I let him borrow a special dibble planting tool we designed for planting containerized seedlings. Afterward, he told me he had completed the job in a fraction of the time using the dibble than he would have with his makeshift tool. In addition, the seedlings with which he was provided were of inferior quality for the site, and the cost nearly as great as what we charge for our quality stock of the same age.

A side bar to the issue is the involvement of state, local and regional government entities such as soil conservation districts. Many of these local

government entities have their own nurseries which produced over 800 million seedlings in 1982, and the federal government helped get them started. For example, in 1924 Congress passed the Clarke-McNary Law which put the federal government in the business of helping state nurseries for conservation purposes. Although the direct relationship has been severed, we live with the legacy of that program. Quite honestly, we do not know the full magnitude of this competition but we do know it is substantial. In 1981, we identified 88 nurseries in production at the state level alone. Once the government has its foot in the door, it never turns back.

A second related problem with federal nurseries is their susceptibility to overproduction. On more than one occasion they have produced a surplus of which they must then dispose. In all fairness, the Forest Service has worked hard to devise alternatives to ensure that disposal does not effect commercial markets, however, short of turning them into mulch, any alternative generally results in an infringement on the private sector market. If government was not in the nursery business to begin with, such problems would not occur.

In recent years, there has been considerable documentation of business' ability, particularly small business, to generate new jobs and to fuel the engines of our economy. At the same time we, as a nation, have raised questions about the size and purpose of our government as budget deficits of $150-200 billion dominate the headlines. Yet, we have failed to enact a policy that will help the job creators; reduce the size of government and the deficit; and, be consistent with the economic philosophy of the founding fathers of this country. It is difficult for the business community to understand the government's inability to develop and implement sound management concepts. We can see no better way to maximize the effective use of our nation's resources than focusing the attention of the government on the act of governance and leaving the job of commercial activity to the private sector.

Our founding fathers recognized that business should be left to business. Thomas Jefferson once said "the true theory of our Constitution is surely the wisest and best, that the states are independent as to everything within themselves, and united as to everything respecting foreign nations. Let the General Government be reduced to foreign concerns only, and let our affairs be disentangled from those of all other nations, except as to commerce, which the merchants will manage the better, the more they are left free to manage for themselves, and our General Government may be reduced to a very simple organization, and a very inexpensive one; a few plain duties to be performed by a few servants." (emphasis added)

Our track record in this important area is dismal. As early as 1933 a Special House Committee reported on the growing number of commercial activities being performed by the government. (House Special Committee, Government Competition with Private Enterprise, 72 Congress, 1st Session, House Report 235) Even then the list of activities was quite extensive. (Appendix III)

During the 1950's Congress and the Executive Branch undertook the first major effort to grapple with this problem. In 1954, the House Committee on Government Operations issued a report entitled "The Government in Business." The first sentence of that report stands today as topical as the day it was written. The committee stated "The subject of Government in Business is wide in scope and extremely important in this era of big government debts, heavy taxes, and complex intergovernmental relations." The Report quoted Thomas Jefferson, James Madison, Alexander Hamilton noting that the "Founding Fathers did not conceive that the Federal Government would engage in business in competition with citizens striving for a livelihood."

The Committee observed that in 1953 the government operated over 100 business type activities and recommended that the government should stop competing with the private sector. In its conclusion, it made a statement which perhaps best summarizes the concerns of the business community. The

Committee stated: "Genuine efforts should be exerted to encourage rather than discourage industry to handle the Government's business. A strange contradiction exists where the Government gives lip service to small business and then re-enters into unfair competition with it. (emphasis added) In 1954, the House of Representatives passed one of the first bills on this subject but it failed to pass the Senate. It is remarkably similar to S.1746 in intent. (Appendix I)

This attention by Congress did result in executive branch activity. The Bureau of the Budget issued Budget Bulletin 55-4 in January, 1955. (Appendix II) The AAN's struggle to get the government to develop a cohesive, realistic management system shifted to the Executive Branch at that point and it is where we have concentrated our efforts for the last 30 years. During this period, we have witnessed several versions of the Bureau of Budget's, now the Office of Management and Budget (OMB), attempt to control the growth of government's burgeoning commercial activity. The recently introduced Circular A-76 is the culmination of this process. The fact that we are no closer to solving this problem nearly 30 years later is testimony to the fact we need more than an executive policy, we need a clear mandate. Ironically, we were probably closer to a solution then than now. At that point, we recognized the principles which should form the basis of this policy and are embodied in S.1746.

The policy as stated in 55-4 was simple and straight forward: "It is the general policy of the administration that the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels. Exceptions to this policy shall be made by the head of an agency only where it is clearly demonstrated in each case that it is not in the public interest to procure such product or service from private enterprise."

Interestingly, the relative costs of government vs private production were introduced in 55-4 as a factor only if a product was not available at a reasonable price. "The relative costs of Government operation compared to purchase from private sources will be a factor in the determination in those cases where the agency head concludes that the product or service cannot be purchased on a competitive basis and cannot be obtained at reasonable prices from the private industry."

Through the years, the OMB circular moved away from the original premise toward justification of government activities based on intensive and elaborate cost accounting. We believe A-76 has failed to produce sound management for several reasons.

First, it is not perceived as a national priority either within the government or the private sector. A 1978 study by the General Accounting Office came to the same conclusion and recommended, as we do, the establishment of a national policy, endorsed and supported by both the legislative and executive branches. The national policy must be stable, understandable, and provide a balance among many conflicting national issues." (GAO Study PSAD 78-118, September 25, 1978)

Second, there must be a presumption that activities should be contracted out and the burden placed on the agencies to demonstrate the clear and convincing need for in-house activity. A-76 does not create the burden, and our industry's experience will demonstrate that A-76 simply has too many ambiguous "loopholes" which allow agencies to justify in-house production.

While we do not believe cost-effectiveness is an appropriate matter for the legislation, if cost considerations are interjected into the equation, they must fairly reflect costs. In particular, government administrative overhead, pension and benefit costs as well as lost tax revenue must be more accurately portrayed. Ironically, the issue of cost effectiveness of seedling production has never been addressed by government.

The nursery activities of the Service were the subject of an OMB Circular A-76 review in 1982. At that time the Forest Service listed these advantages for in-house activity and disadvantages of contracting out:

"Advantages of In-house Production.

1. The Forest Service has facilities, expertise, and direct control over nursery production and management. Easier to correct problems--ensure long range production.

2. We can locate nurseries on sites adaptable for nursery stock production.

3. We can maintain accurate control of seed sources and planting stock.

4. National Forests have more flexibility.

   a. Last minute sowing requests, species shifts, seed source modifications.

   b. Hold stock for a third (second) growing season due to timber harvest or site preparation conditions.

   c. Special last minute lifting, grading, packing, etc., instructions due to shift in sites and/or weather conditions.

5. Since forest tree seedlings usually require 2 or 3 years to grow prior to lifting, Forest Service would not be under restraint such as maximum contract of 1-year of firm prices and 2-option-years.

6. Do not have to depend on low bidders or small business incentives which may exclude competent nurseries regardless of their expertise.

7. Forest Service nurseries provide:

   a. Opportunity for research concerning nursery related problems--tree production, insect and disease problems, etc.

   b. Employment for surrounding communities.

   c. Educational opportunity for local communities.

8. Forest tree improvement reproductive materials are produced at Forest Service nurseries. Usually the personnel involved with tree improvement do the work themselves. Sometimes they are assisted by highly trained nursery personnel.

9. We can maintain our expertise and national and international leadership in nursery management.

10. We can assure prime nursery acres will be available to meet future needs.

11. We will have greater assurance that quality stock in appropriate numbers will be available on schedule. It takes 2 to 3 rotations to develop management strategies for a particular nursery.

12. Nurseries can contract specific operations i.e., fumigation weeding, and lifting.

13. Would not have to compete with industry and other private individuals for nursery space; i.e., forest tree seedlings, ornamentals, and other specialized nursery products.

14. Political opposition to closing nurseries can be substantial.

Disadvantages to Contracting Out.

1. Default and resultant cost to Government. This includes loss of seed, site preparation, and wood production.

2. Private nursery capacity is currently not available in quantities required to meet all Forest Service seedling needs.

3. May have to start with inexperienced contractors for each crop. This has been a fairly common occurrence in past contracts.

4. Private sector has not demonstrated they can consistently produce trees that meet Forest Service specifications in the quantities desired, even for relatively small contracts.

5. During times of peak demands, nursery space may not be available to Forest Service due to production of more valuable crops i.e., ornamentals and other specialty products.

6. Forest Service cannot offer multiple year contracts that would encourage a private grower to develop his facilities. It is possible to offer a 1-year contract with 2 option years; however, even in the option years, the contractors bid must be compared with the market price. Therefore, there is no assurance that he would be awarded the contract in the option years.

7. Forest Service would have large capital investments to dispose of or write off.

8. Impact on local communities where nurseries are closed would be large in some cases.

Conclusions and Recommendation of the A-76 Review

The Forest Service nursery system has been developed over many years with full support of Congress. The advantages of maintaining in-house operation for present nursery capacity is overwhelming. At present, the only possible way to meet Forest Service goals is for the Forest Service to produce a majority of their seedling needs. The exact amount will vary by Region depending on the available capacity in the private sector.

The operations of a nursery and production of quality seedlings requires constant observations and on-the-spot decisions based on the biological requirements of the particular species of tree. Nursery managers and their crews develop this experience over time and several crops. To be consistently successful, they need to know how specific seed sources respond to cultural treatments and the types of cultural treatments that are needed in specific sections of their nursery.

The nursery program is the foundation for the reforestation program. If we are to meet the Nation's timber needs in the future it is absolutely critical to maintain the identity of all reproductive material through all nursery phases to outplanting on the prepared sites. It is also mandatory that quality stock be available in suitable quantities to reforest areas as soon after harvesting as possible. The nursery program for growing seedlings to reforest National Forest System lands is inherently governmental in nature and is very closely related to the public interest.

Recommendation

We recommend in-house operation of the nursery capacity. Specific work at each nursery will be contracted when it is to the Government's cost advantage. Private nurseries will be asked to produce some stock for the Forest Service. A-76 reviews will be made for seedbed expansion and new starts over the stated approved capacities."

I have already addressed earlier in my statement the arguments the forest service has advanced in this review. What I want to point out here is that the review was a classic example of government overuse of the loopholes in A-76. In-house nursery production was justified as a "Discretionary Application of Governmental Authority." A cost comparison was never conducted.

Private nursery capacity to produce the seedlings necessary for Forest Service requirements may not be immediately available, but with adequate planning and cooperation, a feasible plan could be achieved. I have been in contact with many nurseries throughout the U.S. None whom I know has ever been approached by the Forest Service. Federal in-house studies seem to reflect the narrow in-house view, with no input from the private sector.

In summary, we have witnessed a steady growth of government competition in our own industry and in the economy in general. Having cooperated with every program that has been offered to stem the tide of this growth, we now believe it is time to implement the alternative which we recognized as the only logical solution nearly 50 years ago, passsage of legislation to establish a national policy of reliance on the private sector. To say the private sector has not demonstrated consistent production is misleading, since we have never had the opportunity. In light of all the facts, I believe that the "Freedom from

Government Competition Act" (S.1746) should be passed, and private nurseries given a fair chance to demonstrate that they can offer equal or superior services to the government at equal or reduced cost. We support and heartily endorse S.1746, the "Freedom from Government Competition Act." Thank You.

Appendix 1

H.R. 9835
Reported July 21, 1954

Sec. 1. That this Act may be cited as the "Termination of Federal Commercial Activities Act."

Sec. 2. The Congress hereby declares that the policy of the Federal Government should be at all times the encouragement of private enterprise. Certain activities of the Federal Government have developed which tend to discourage private enterprise, in that the Federal Government is engaging in commericial and industrial activities in direct competition with activities engaged in by private persons for profit. These commercial activities engaged in by the Federal Government deprive governments at all levels of tax revenues, and by competing with private enterprise, weaken the strength of our national economic system. It is therefore the purpose of this Act to provide for the termination, to the maximum feasible extent, of all commercial activities engaged in by the Federal Government in the United States which compete with private enterprise.

It is declared to be the policy of the Congress that the Federal Government shall not engage in business-type operations competitve with private enterprise except where it can be demonstrated that it is necessary for the Government itself to perform such operations in furtherance of national programs and objectives legally established.

Sec. 3. It shall be the duty of the Secretary of Commerce acting under the instructions, rules and regulations issued by the President to receive from the public and examine specific complaints of Government competition with private enterprise and, where the facts warrant, consult and cooperate with officers of the Government supervising the Government business-type operations complained about in order to suggest, where appropriate, the termination or limitation of Government competition through the utilization of private facilities, products, or services in lieu thereof.

Sec. 4. As used in this Act-

(1) the term "commercial activity" means any commercial or industrial activity performed by the Federal Government which is directly in competition with activities engaged in by private persons for profit; and

(2) the term "United States" means the several States, Alaska, Hawaii, and Puerto Rico.

Sec. 5. The President shall examine and from time to time reexamine each commercial activity engaged in by each department, agency, and independent establishment in the executive branch of the Federal Government and shall determine what the effect, if any, on essential activities of the Federal Government would be of terminating such commercial activity.

Sec. 6. Whenever the President, after investigation finds that any commercial activity engaged in by the Federal Government in the United States can be carried on by private enterprise without substantially impairing essential activities of the Federal Government, he is authorized to terminate such activity: Provided, however, That nothing herein contained shall apply to any Government business-type operations being carried on the effective date of this Act or to any Governmentment business-type operations theretofore or hereafter specifically authorized by the Congress.

Sec. 7. The President shall make an annual report to the Congress concerning operations under this Act, together with such information, comments, and recommendations as he may deem appropriate for furthering the policy declared in section 2 of this Act.

Sec. 8. Such sums as may be required to carry out the purposes of this Act are hereby authorized to be appropriated.

40-458 0 - 85 - 17

APPENDIX II

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
Washington 25, D. C.

BULLETIN NO. 55-4 January 15, 1955

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Commercial-industrial activities of the Government providing products or services for governmental use

1. Purpose. This Bulletin initiates a review of those commercial-industrial type activities conducted by the Government that provide services or products for its own use which could be procured from private enterprise through ordinary business channels (hereafter called commercial activities). It also sets forth Government policy with respect to both the starting and carrying on of such activities.

The fact that this Bulletin does not deal with products or services provided directly to the public in no way relieves the agencies of keeping such activities under constant review and reevaluation as to the need for the Government to carry on such activities. The results of such reevaluation will be reflected in the legislative and budget programs.

2. Policy. It is the general policy of the administration that the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary business channels. Exceptions to this policy shall be made by the head of an agency only where it is clearly demonstrated in each case that it is not in the public interest to procure such product or service from private enterprise.

3. Responsibility. In furtherance of this policy, the head of each agency shall give personal direction to the accomplishment of the review (inventory and evaluation) of the activities of his agency which fall within the scope of this Bulletin. He shall assign to a member of his key staff the responsibility for direction and coordination of this program throughout the agency.

4. Scope and coverage of review. The review will consist of two phases: (a) an immediate inventory of all commercial activities, and (b) an evaluation of these activities, to be spread over a longer period of time. The first evaluation will cover manufacturing activities as set forth below. This will be followed periodically by similar evaluations of other commercial activities, such as wholesale and retail trade, repair and business services, construction, transportation, communication, public utilities, agriculture, forestry, fisheries, and mining. Instructions for later evaluation reports will be issued subsequently, but agencies may proceed with a program of evaluation and action as fast as time permits.

The following rules will prevail as to coverage of the review:

a. The review will cover activities carried on in the continental United States and in the Territories of Alaska and Hawaii.

b. In determining whether an activity is "commercial" in nature and "could be procured . . . through ordinary business channels," reference may be made to the Standard Industrial Classification Manual and to ordinary business practice with respect to procurement of services or products. The inclusion of an activity in the manual will be generally considered indicative that it may be procured commercially. There will be excluded from coverage as noncommercial, however, those functions which are a part of the normal management

responsibilities of a Government agency or a private business of comparable size (such as accounting, personnel work, and the like).

c. Any activity at any one location which involves an equipment investment of less than $5,000 and a product or service with an approximate annual value of less than $25,000 shall be excluded.

d. "Activities conducted by the Government" will exclude Government-owned, contractor-operated facilities as far as evaluation is concerned, but will include such facilities for purposes of the inventory report.

e. "Activities . . . for its own use" will include the activities of producing a service or product primarily for the use of the Government (whether the same agency or other agencies), even though some portion of the product or service is sold or given to the public. The coverage will include activities which are to provide a service or product for the use of a Government agency in its official duties, even though the agency is engaged in carrying out a service to the public (e.g., it will include the manufacture of mail bags or the generation of power at a Government institution). However, the coverage will exclude the activities of producing a service or product primarily to be sold or given to the public (e.g., it will exclude the generation of power for sale to the public).

5. Inventory of commercial activities. Each agency shall prepare an inventory of all commercial activities. The inventory shall identify the activity in terms of the Standard Industrial Classification Manual, the number of installations or the locations where the activity is conducted, the capital assets invested in the activity, and the average number of employees engaged in the activity. Exhibit 55-4A indicates the format for reporting this inventory to the Bureau of the Budget. Instructions for this report are contained in Attachment A.

6. Evaluation of manufacturing activities. Each agency shall make an evaluation of all its commercial activities which are classified as manufacturing in the inventory. Government-owned, contractor-operated activities included in the inventory report required under paragraph 5 above are not required to be evaluated at this time.

The evaluation should determine whether or not each of these manufacturing activities should be continued by the Government in the light of the objectives stated in paragraph 2 above.

The relative costs of Government operation compared to purchase from private sources will be a factor in the determination in those cases where the agency head concludes that the product or service cannot be purchased on a competitive basis and cannot be obtained at reasonable prices from private industry. In those cases it will be necessary to develop detailed data on such costs. In doing so, the costs of Government operation should be fairly computed and complete, covering both direct and indirect costs, including elements not usually chargeable to current appropriations such as depreciation, interest on the Government's investment, the cost of self-insurance (even though it is unfunded); there shall also be added an allowance for Federal, State, and local taxes to the extent necessary to put the costs on a comparable basis. Care must also be exercised to see that the costs of procuring material from private sources are fairly computed and complete, being truly representative of the lowest price the Government would pay for the quantity and quality needed, and taking account of any applicable indirect costs of the Government for such procurement.

The evaluation will also review the legal authorization for each activity and determine whether congressional action is necessary to permit discontinuance. Except where such congressional action would be required, activities should be discontinued as soon as the agency head determines that it is reasonably possible to do so. Where congressional action would be necessary to permit discontinuance, the agency head shall seek such action promptly, submitting drafts of legislation or appropriation language, as may be required, to the Bureau of the Budget in the usual manner.

The evaluation should exceed promptly so that a report of the results may be made as provided in paragraph 9 below. The report on each manufacturing activity conducted during any part of fiscal years 1954 and 1955 shall be submitted on exhibit 55-4B, showing what the agency head decides to do about the elimination, curtailment, or continuation of each activity. The form is divided into three sections. Section A shall be completed on all reportable activities. Section B shall be completed on those activities which are being curtailed, eliminated, or procured from commercial sources. Section C shall be completed for all activities which will continue as Government operations. Applicable questions only need to be answered. The justification for continuation as a Government operation must be complete. Instructions for this report are contained in Attachment B.

7. Applicability to Department of Defense. Inasmuch as the Department of Defense started its own review of these activities some months ago, special instructions will be issued for that department in order to take full advantage of the work already done.

8. Questions and interpretations. Any questions regarding completion of the forms or interpretation as to coverage should be presented to the respective Bureau of the Budget examiners.

9. Reporting dates. The name of the individual designated to direct the program and three copies of whatever implementing instructions are issued by the agency shall be furnished the Bureau of the Budget by February 15, 1955. Three copies of the inventory reports (exhibit 55-4A) shall be submitted to the Bureau of the Budget on or before April 15, 1955. Three copies of the reports on evaluation of manufacturing activities (exhibit 55-4B) shall be submitted to the Bureau of the Budget on or before July 15, 1955. Copies of the evaluation report form may be secured in limited quantity from the Bureau of the Budget Publications Unit, code 189, extension 161.

By direction of the President:

ROWLAND R. HUGHES
Director

Attachments

APPENDIX III

GOVERNMENT COMPETITION WITH PRIVATE ENTERPRISE IN 1932

(Hearings held before a special subcommittee of the House in 1932)

Airways
Transportation (all kinds)
Amusements
Architecture
Artificial limbs
Bakeries
Banking
Barber shops
Binding
Brickmaking
Broadcasting
Brushes and brooms
Coinage
Commissaries
Cordage
Creameries
Cafes and restaurants
Canning
Post exchanges
Canvas goods
Cattle raising
Cement
Chemicals
Chandlery
Charts and maps
Coal business
Fertilizers
Chicken raising
Civil engineering
Cleaning and pressing
Clothing
Coffee importation and roasting
Collection agencies
Commercial testing
Cotton industry
Dairying
Dredging
Electric light and power
Employment bureaus
Explosives
Animal and fowl feeds
Ammunition
Engraving
Flags
Foundries
Fruits and vegetable shippers
Furniture
Furs
Gold refining
Gasoline and oil
Golf courses
Greenhouses
Harness
Helium
Highways and roads
Hospital supplies
Hospitals
Hotels
Ice
Ice cream
Ink
Insurance
Laundries
Libraries
Lithographing
Irrigation
Loan associations
Lumber
Magazines and newspapers
Mail bags
Markets
Meat Markets
Mechanical shops
Medical science
Motion pictures
Motor cars
Paints
Parachutes
Parcel post
Printing (all kinds)
Radio
Real estate
Rubber
Rubber stamps
Seeds
Serum
Service stations
Shipbuilding and repair
Shoe factories
Silver refining
Slaughtering
Stevedoring
Swimming pools
Tailoring
Telegraph and telephone
Tennis courts
Truck farming
Warehousing
Woodworking
Wood industry

PAGE 33
MONDAY, APRIL 30, 1984

THE WALL STREET JOURNAL.

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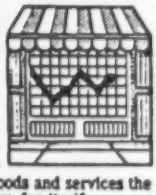
SMALL BUSINESS

Tree Nurseries Reflect Battle Against Federal Competition

By Sanford L. Jacobs
Staff Reporter of The Wall Street Journal

THE U.S. FOREST SERVICE raises about 150 million trees a year at 12 nurseries around the country. It has been growing seedlings for nearly 80 years for reforestation purposes. Some of the nursery jobs—fumigating, weeding, harvesting—are done by private contractors. So is some of the planting.

But the American Association of Nurserymen contends that operating tree nurseries is a commercial activity that should be left to the private sector. In testimony before a Senate committee recently, the association explained its position: "From a philosophical point of view, as well as a practical matter, we are opposed to government competition with business."



Scores of other business associations oppose Uncle Sam's competing with private enterprises. They view practically anything government does—operating laundries, producing maps, baking bread—as competition with the private sector, which would be supplying the goods and services the government needed if it wasn't providing them for itself.

It's a longstanding issue. Congress first held hearings on the matter in 1932; the nurserymen's association has been contesting the operation of federal nurseries for nearly 80 years.

IT'S A TOUCHY SUBJECT. Government employees engaged in everything from firefighting to storing and distributing maps fear they will lose their jobs if the private sector takes over work they have been doing. And their unions have clout with a number of congressmen, who opposed recent efforts to contract out more government work.

On the other hand, economy-in-government advocates point to the savings possible if government lets profit-motivated businesses take over. A recent Defense Department report provides ammunition for them.

The Pentagon figured that between Oct. 1, 1980, and Oct. 1, 1982, it saved a total of $300 million—22% on average—on contracts given to the private sector instead of having the work done by its own employees. "We think 22% is darn significant," says an Office of Federal Procurement Policy official.

Besides saving money, there's an argument to be made in a capitalistic society that the government should maximize its reliance on the private sector and minimize its own activities. However, the procurement office official says practical considerations must temper ideology. "We have a philosophic problem with the federal government competing with the private sector unfairly," the official says. "But the fact is we have spent a lot of money building an infrastructure so government can provide a lot of goods and services. So it doesn't make sense to try to rewrite history in one swoop."

BUT OTHERS SEE the need for quick action. An aide to a senator who wants to reduce such government activity notes that the private sector provided 60% of the government's needs in 1967, but only 40% by 1981. Moreover, the government has come to own a bigger portion of the nation's wealth. The ratio of private wealth to public wealth—tangible assets excluding real estate—was about 6 to 1 in 1929, the aide says, but had shrunk to 3 to 1 by 1981.

"This means," he says, "that without ever having had a congressional vote embracing the idea of socialism, what you are seeing is the base of private wealth compared to public wealth narrow—which is a socialistic bent."

On a less lofty level, a Forest Service tree specialist gives a down-to-earth explanation for the agency having its own nurseries. The agency started raising its own seedlings "around the turn of the century when there were no private-sector sources," he says, adding that private business still can't fill the Forest Service's needs. "They don't deliver what they are supposed to. We have had sites readied and contracts let to plant trees and then no trees."

Some of the fault for that lies with the Forest Service, nurserymen say. It issues only one-year contracts, which discourages commercial nurseries from investing in production for the government. And it hasn't tried to encourage them to supply its needs.

IF THE GOVERNMENT wanted to work with commercial nurseries, they could supply all of its needs, says Robert H. Eastman, president of Western Maine Nurseries Inc. in Fryeburg, Maine. He isn't impressed with federal plantings he has seen. "They don't seem to know what they're doing," he says. A man who had a contract to plant Forest Service seedlings wasn't even equipped to do the job properly, says Mr. Eastman, adding that he lent the man the correct tool—a dibble—to plant the trees.

Surpluses are another sore subject. In 1982, the Forest Service had about 11 million more seedlings than it planted and destroyed most of them.

But some congressmen want to authorize the Forest Service to give surpluses to state and local governments and nonprofit organizations such as the Boy Scouts. Such a giveaway would deprive commercial nurseries of sales, nurserymen argue.

"Not only can't we get them to buy from us," says John S. Sataga), government affairs director of the nurserymen's association, "but they will be competing in the marketplace. This is what happens when you have government doing this sort of thing."

Senator WALLOP. Mr. Satagaj, enlighten me a little bit about the Government's tree growing program. Is it nationwide?

Mr. SATAGAJ. I couldn't tell you the specific locations of the 13 nurseries.

Senator WALLOP. They have 13?

Mr. SATAGAJ. Thirteen Federal ones right now; I think a substantial number are located in the northwest. In fact, this particular overproduction problem is now centered in that area. The State of Oregon in particular is suffering through great problems with that. I know there is one in the Pennsylvania area, and that was a problem several years ago, and I believe there is one in the Southeast, so it is nationwide in a sense, but there are 13 locations, and they are generally located near major forests because this is basically a reforestation project for their production purposes.

The surpluses are going for other things other than reforestation, but that is the main purpose of the nurseries.

Senator WALLOP. These program proposals take that overproduction and use it as the resource for the volunteer program?

Mr. SATAGAJ. Exactly; that is what it would be, and there is some good intentions in the program, and they talk in the Department of Agriculture about the Boy Scouts doing plantings on the Federal programs and so forth, but the problem is you really are going to have a difficult time controlling just the Boy Scouts applying for the use of these. All nonprofits are eligible on all public lands, and State level as well as national forests, so once you got it started, there is just an enormous potential for it to expand beyond the original intention.

Senator WALLOP. Is it improvable if it were limited to BLM and National Forests?

Mr. SATAGAJ. I don't think so, and the reason I say that is because of the very extensive files we have in our office on these programs over the last 30 years. Every time we go through this we try to be as accommodating as possible, and we end up suffering as a result.

We have not found the way to do it where everybody is happy. We simply have to stop it basically.

Senator WALLOP. Well, I appreciate your testimony and here is a problem that we will come down on it, but I am glad for your testimony. Your point of view is represented.

Mr. SATAGAJ. Thank you very much.

Senator WALLOP. That completes the witness list, and the hearing is adjourned.

[Whereupon, at 11:04 a.m., the hearing was adjourned.]

APPENDIX

Additional Material Submitted for the Record

REPORTER

STATEMENT BY SENATOR STROM THURMOND (R-S.C.) BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER REFERENCE THE CAPITAL CHILDREN'S MUSEUM AND THE LEARNING OPPORTUNITY CENTER. JUNE 28, 1984.

MR. CHAIRMAN:

I WISH TO EXPRESS MY STRONG SUPPORT FOR THE NATIONAL LEARNING CENTER AND ITS TWO OPERATING ENTITIES, THE CAPITAL CHILDREN'S MUSEUM AND THE LEARNING OPPORTUNITY CENTER. AS THIS SUBCOMMITTEE REVIEWS THE PROVISIONS OF H.R. 2889, THE NATIONAL HISTORIC PRESERVATION ACT AMENDMENTS, I WOULD URGE APPROVAL OF SECTION 3, WHICH AUTHORIZES THE PREPARATION OF A COMPREHENSIVE MANAGEMENT PLAN WITH THE ASSISTANCE OF VARIOUS AGENCIES OF THE FEDERAL GOVERNMENT, AND FURTHER, AUTHORIZES GRANTS-IN-AID OF UP TO $500,000 PER YEAR THROUGH 1988.

MR. CHAIRMAN, THE NATIONAL CHILDREN'S MUSEUM IS AN OUTSTANDING EXAMPLE OF INDIVIDUAL AND COMMUNITY COOPERATION. THE FOUNDER AND MOVING FORCE BEHIND THE CONCEPT IS MS. ANN W. LEWIN, PRESIDENT OF THE CENTER. DURING THE SEVEN YEARS SINCE ITS CREATION, MS. LEWIN HAS WORKED TIRELESSLY WITH PERSONS THROUGHOUT THE AREA, AND WITH THE FEDERAL GOVERNMENT THROUGH HUD, TO TRANSFORM HER IDEA INTO THE FINE PHYSICAL FACILITY AND EXCELLENT PROGRAMS WHICH NOW MAKE UP THE CAPITAL CHILDREN'S MUSEUM AND THE LEARNING OPPORTUNITY CENTER. THIS RAPID AND SUCCESSFUL DEVELOPMENT IS A TRIBUTE TO THE HARD WORK, DEDICATION AND DETERMINATION WHICH MS. LEWIN PUT INTO THIS PROJECT.

WHEN THE CHILDREN'S MUSEUM FIRST OPENED, IT CONSISTED OF ONLY A FEW SMALL EXHIBITS IN SPACE DONATED BY THE D.C. BOARD OF EDUCATION. SUBSEQUENTLY, THE CENTER ACQUIRED ITS CURRENT FACILITY IN NORTHEAST WASHINGTON WITH THE ASSISTANCE OF A GRANT FROM HUD. THE CENTER NOW HOSTS MORE THAN 250,000 VISITORS PER YEAR AND CONDUCTS A WIDE VARIETY OF PROGRAMS AND ACTIVITIES. IN ADDITION, IT SERVES AS A

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TRAINING GROUND FOR TEACHERS, WITH PROGRAMS IN ART, SCIENCE AND THE HUMANITIES, AND PROVIDES SEVERAL LEVELS OF INTERN AND APPRENTICE TRAINING FOR VOLUNTEERS AND STAFF SERVING THE HANDICAPPED.

MR. CHAIRMAN, THE NATIONAL LEARNING CENTER HAS PROVEN TO BE AN ASSET NOT ONLY TO PERSONS LIVING IN AND AROUND WASHINGTON, BUT ALSO TO CHILDREN AND ADULTS THROUGHOUT OUR COUNTRY. THIS IS TRULY A PROJECT OF NATIONAL SIGNIFICANCE. IT DESERVES THE SUPPORT AND ASSISTANCE OF THE FEDERAL GOVERNMENT.

THANK YOU MR. CHAIRMAN, FOR ALLOWING ME THE OPPORTUNITY TO EXPRESS MY SUPPORT FOR THIS WORTHY CAUSE. I HOPE THAT YOU AND THE OTHER DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE WILL CONSIDER IT FAVORABLY SO THAT IT MAY PROMPTLY BE REPORTED.

NEW YORK LANDMARKS CONSERVANCY

April 24, 1984

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
RECEIVED
APR 27 1984

The Hon. James A. McClure
Chairman
Senate Commitee on Energy and
Natural Resources
SD-360 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator:

On behalf of the New York Landmarks Conservancy, a private, not-for-profit organization chartered in the State of New York to promote the protection, preservation and adaptive use of historically, architecturally and culturally significant buildings, I urge you to support H. R. 2889, which will allocate much needed funds to the National Building Museum during renovation of the Pension Building. In 1978, Congress rightly hailed the Pension Building as a "unique architectural treasure," and determined that it should be renovated and used to house a national museum dedicated to the building arts.

Please aid this worthy effort by supporting H. R. 2289.

Sincerely,

Laurie Beckelman
Executive Director

New York Landmarks Conservancy
330 West 42nd Street
New York, New York 10036
212-736-7575

FTR
6/28/84

George M. Notter Jr., FAIA
President

THE
AMERICAN
INSTITUTE
OF
ARCHITECTS

1735 New York Avenue, N.W.
Washington, D.C. 20006
Telephone: (202) 626-7300
Cable Address: AMINARCH
Telex: 710822 1112

June 22, 1984

The Honorable Malcom Wallop
Chairman
Public Lands and Reserved Water Subcommittee
Senate Energy and Natural Resources Committee
308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wallop:

As President of The American Institute of Architects, the professional association representing this nation's architects, I would like to urge your favorable consideration of H.R. 2889, providing $1.5 million in operating funds for the National Building Museum. To deny this appropriation would be to deny the public the opportunity to benefit from the creative exhibition and programming of the Museum, which is located in a building that is perhaps without architectural parallel.

The Reagan Administration has raised questions of long-term occupancy and management which deserve further debate, although the Congress has clearly indicated its support on numerous occasions. The AIA would be glad to provide further justification of this appropriation at any suitable occasion.

Once again, thank you for your consideration and thoughtful deliberation of this important matter.

Sincerely,

George M. Notter Jr., FAIA
President

George M. Notter Jr., FAIA
President

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Official Committee File

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
RECEIVED
JUN 27 1984

June 25, 1984

The Honorable James A. McClure
Chairman
Senate Energy and Natural Resources Committee
316 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator McClure:

As President of the American Institute of Architects, the professional association representing this nation's architects, I would like to urge your favorable consideration of H.R. 2889, providing $1.5 million in operating funds for the National Building Museum. To deny this appropriation would be to deny the public the opportunity to benefit from the creative exhibition and programming of the Museum, which is located in a building that is perhaps without architectural parallel.

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Once again, thank you for your consideration and thoughtful deliberation of this important matter.

Sincerely,

George M. Notter Jr., FAIA
President

FTR

Reply to: SMACNA, Capitol Hill
418 South Capitol St., S.E.
Washington, D.C. 20003
(202) 547-8202

1984 JUN 27 AM 8:48

June 26, 1984

The Honorable Malcolm Wallop
Senate Energy and Natural Resources
Subcommittee on Public Lands
U.S. Senate
Washington, DC 20510

Dear Senator Wallop:

As Director of Governmental Affairs for the Sheet Metal and Air Conditioning Contractors' National Association, Inc. (SMACNA), I want to submit the enclosed statement of our President, Carl B. Miller, for the hearing record on funding for the National Building Museum. While we are unable to appear before the Subcommittee when H.R. 2889 is discussed, we do want to register our support for the National Building Museum in the official record.

If you have any questions or comments on this statement or other issues before the Committee please contact me at SMACNA's Capitol Hill office.

Sincerely,

Stanley E. Kolbe, Jr.
Director, Governmental Affairs

The Sheet Metal and Air Conditioning Contractors' National Association, Inc.

SHEET METAL AND AIR CONDITIONING CONTRACTORS'
NATIONAL ASSOCIATION

STATEMENT

NATIONAL BUILDING MUSEUM

U.S. SENATE

JUNE 26, 1984

SMACNA is a National Trade Association representing some 2500 sheet metal contractors engaged in the fields of heating, air conditioning, air pollution control, solar energy installation, architectural sheet metal and other metal applications. The sheet metal contracting industry totals over $8.6 billion annually.

National Headquarters
8224 Old Courthouse Road
Tysons Corner, Vienna, Virginia 22180
(703) 790-9890

Capitol Hill Office
418 South Capitol Street, S.E.
Washington, D.C. 20003
(202) 547-8202

Reply to: SMACNA, Capitol Hill
418 South Capitol St., S.E.
Washington, D.C. 20003
(202) 547-8202

SMACNA STATEMENT IN SUPPORT OF FUNDING FOR THE NATIONAL BUILDING MUSEUM

As President of the Sheet Metal and Air Conditioning Contractors' National Association, Inc. (SMACNA), the national trade association representing 2,500 construction contracting corporations throughout the U.S., I want to express our strong support for H.R. 2889, which amends section 306 of the National Historic Preservation Act. This much needed legislation, which recently passed the House, authorizes appropriations to the National Building Museum of $1.5 million per year to maintain ongoing operations. While the amount is insignificant by Federal Budget standards, passage of this bill reaffirms the essential Congressional commitment to preserving the finest examples of architectural and cultural excellence in our nation.

H.R. 2889 in conjunction with the proposed supplemental funding for renovating the museum is crucial to completing necessary repairs envisioned by Congress when enacting the museum's original authorization. Also of importance is the fact that the National Building Museum is the only institution which recognizes the many significant contributions of the construction industry to our nation's history.

The Sheet Metal and Air Conditioning Contractors' National Association, Inc. is one of the many construction industry associations involved in supporting the rehabilitation and operation of the National Building Museum. From a brief examination of the attached list of supporting organizations, it should be evident that the historic structure is of substantial importance to millions of Americans whether involved in the construction industry or not. Housed in the Pension Building, modeled over 100 years ago after the Famese Palace in Rome, the museum is a magnificent example of renaissance revival architecture. Of additional structural significance is the fact that the museum is housed in the largest brick building in the world.

It is instructive to note that in addition to its many construction exhibits in Washington, DC, the Museum will send throughout the country a series of exhibitions, publications, and films to educate the public to the problems and opportunities in the construction industry. Of great value to the construction industry are the new and innovative building techniques being developed around the country. Now is not the time for Congress to retreat from its commitment to the museum, but a time to move on to complete renovation as soon as possible.

As one views many of our nation's most famous structures the

spirit of rejuvenation and restoration can be seen from the U.S. Capitol to the White House to the Statue of Liberty to other architectural treasures in all regions of the country. Congress has also shown interest in preserving the finest of our structural heritage through the passage of preservation funding, tax incentives, and special grant programs. Established in 1980 (P.L. 96-515) the National Building Museum was a special demonstration of the important Congressional commitment to excellence in the built environment. Now is not the time for the Administration or the Congress to back away from the commitment made in 1980 by withdrawing the necessary support originally envisioned by Congress. The American people have great reverence and appreciation for their cultural heritage and expect Congress to assist in presenting it.

To quote Article III of the cooperative agreement between the museum, General Services Administration, and the Secretary of the Interior on carrying out the purposes and intent of Congress:

"SECTION 3.01. Standards for Renovation of Building. The NBM has become associated in the public mind with the Building and vice versa, and it is anticipated that this association will continue to grow. It is of critical importance to the NBM, because of this association as well as

the program and purpose of the NBM and the intent of the Act, that the Building be restored as closely as feasible to its original condition, within the funds available, and consistent with the needs of the NBM and other compatible uses and renovated in a manner consistent with the highest professional standards for property of such historic significance. The parties shall cooperate to assure that such standards are met in the renovation of the Building. In recognition of the importance of the renovation of the Building the Administrator and the Secretary will further cooperate with the NBM in assuring appropriate publicity concerning the renovation as a means to furthering public appreciation and understanding of the purposes of the NBM, including renaming the Pension Building as the National Building Museum."

Clearly, this and many other items document that the Congress is on record in strong support for the National Building Museum and its programs. H.R. 2889 is only a small example of that commitment. It should be passed as soon as possible so the museum's important mission can continue unabated. Toward that goal SMACNA and many other organizations, associations, and individuals lend their support.

Thank you.

STATEMENT OF
COLORADO RIVER WATER CONSERVATION DISTRICT
SUBMITTED TO THE
SUBCOMMITTEE OF PUBLIC LANDS
AND
RESERVED WATER
SENATE ENERGY | AND NATURAL RESOURCES COMMITTEE

July 10, 1984

Mr. Chairman Wallop and Members of the Subcommittee:

Thank you for the opportunity to submit this statement for the record on the Hearings of S. 2692. By way of identification, the Colorado River Water Conservation District (River District) is a political subdivision of the State of Colorado created by the State Legislature in 1937 (C.R.S. 37-46-101 et seq.), and is charged with the responsibility of conserving and applying to beneficial use the waters of the Colorado River to which the State of Colorado is equitably entitled under the 1922 Colorado River Compact. The River District is the principal western Colorado water policy body and encompasses all of 12 and parts of 3 more western Colorado counties, an area of 29,000 square miles. Included within its boundaries are the mainstem of the Colorado River and its principal tributaries, the Yampa, the White and the Gunnison rivers. The River District is shown on the attached map.

The River District has a responsibility for the conservation of water for irrigation purposes and is concerned with the ability of irrigators to be able to continue to use their ditches, many of which head on or cross federal lands. At the present time there are suits pending by the United States against irrigators to force the irrigators' compliance with federal agencies interpretation of FLPMA. When the ditches were constructed around the turn of the century they were in compliance with local laws and customs and rights-of-way automatically granted. These ditches should be permitted to continue to operate as originally established without the onerous burden of what amounts fo administrative fiat.

S. 2692 would amend FLPMA to exempt <u>all</u> water conveyance systems, whether they are old or new, from the present permitting requirements. It would replace this with a recordation authority for pre-FLPMA grants and add provisions for post-FLPMA rights-of-way.

H.R. 2982, the House-passed version of this bill, is smaller in scope and relates only to ditches in existence before the enactment of FLPMA in 1976.

On first reviewing S.2692, we became concerned that since it exempted all water conveyance systems, transmountain diverters working on National Forests and BLM lands would not have to comply with the provision of other federal laws such as the evaluation of environmental impacts required by National Environmental Policy Act of 1969. However, paragraph (c) (4) makes it clear that NEPA provisions must be followed but are paid for by the Federal Government.

We also believe that paragraph (c) (4) is clear in that in constructing facilities on new rights-of-ways granted under this subsection, the three provisions set forth therein must be accomplished in order to comply with the requirements of the Act; however, those requirements do not apply to the repair, replacement, or the moving of headgates upstream or downstream on long established unrecorded rights-of-way.

We wish to thank Senator Armstrong for dealing with a very serious problem that has plagued western water users for many years. We believe that the bill effectively exempts water conveyance systems from FLPMA and preserves water rights which are so essential in the semi-arid west.

Very truly yours,

ROLAND C. FISCHER
Secretary-Engineer

WYOMING
INDEX MAP
WYOMING
COLORADO
UTAH
NEW MEXICO
MOFFAT
ROUTT
RIO BLANCO
GARFIELD
EAGLE
GRAND
SUMMIT
PITKIN
MESA
DELTA
GUNNISON
MONTROSE
SAGUACHE
OURAY
HINSDALE
Green River
Yampa River
Little Snake River
Maybell
Craig
Hayden
Steamboat Springs
Dinosaur
Yampa River
Oak Creek
Rangely
White River
Meeker
Kremmling
Granby
Hot Sulphur Springs
Winter Park
Colorado River
Eagle
Eagle River
Dillon
Frisco
Vail
Minturn
Breckenridge
Rifle
Silt
Glenwood Springs
Parachute
Carbondale
Basalt
Aspen
Roaring Fork River
Colorado River
Fruita
Grand Junction
Palisade
Whitewater
Gunnison River
Delta
Paonia
Crested Butte
Hotchkiss
Dolores River
Olathe
Montrose
Uncompahgre River
Taylor River
Gunnison
Sargents
Ouray
Lake City
COLORADO RIVER WATER CONSERVATION DISTRICT

Hampa Colorado
June 25. 1984

Hon William Armstrong

Dear Sir.

We are requesting your help and support to get a bill passed in the Senate to exempt Agricultural Ditchs on national forest property from the act. The Federal Police and Management Act of 1976.

Inclosed are two agreements they have wanted us to sign at different times. The Special use permit dated 2/1/79 was signed by Truman Yowell and John Redmond. Where Willard Redmond and myself James Redmond would not sign it they marked out our names about John Redmond name and ask John Redmond and Truman Yowell to be Collecting agents for money from

William Redmond and James Redmond for our share of bill.

The easement dated 7-26-83 had several items in it that we felt would wrong us and very much be in their favor. We chose not to sign them till some changes were made. They made none.

We feel that both of these documents would threaten to undermine our basic water rights and our state system of water law.

The forest service started court action and issued summons on us. Althou Senetor Armstrong and Agricultural Secretary John Block had mad an agreement that this would not happen till after the prent session of Congress.

I am writing this letter and ending these two document on behalf of Doug Jones, John Redmond, Truman Powell and Myself.

Sincerely
James L. Redmond

United States Department of Agriculture Forest Service	a. Record no. (1-3) 70	b. Region (3-4) 02	c. Forest (5-6) 11
SPECIAL USE PERMIT Fed. Land Policy & Mgnt. Act of 1976 ~~Act of June 4, 1897~~ This permit is revocable and nontransferable (Reg. FSM 2710)	d. District (7-8) 05	e. User number (9-12) 5022	f. Kind of use (13-15) 911
	g. State (16-17) 08	h. County (18-20) 107 103	i. Card no. (21) 1

Permission is hereby granted to John Redmond and Truman V. Yowell

of Yampa, Colorado 80483

hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements:

A right-of-way not to exceed 20 feet in width and approximately 1.75 miles in length on National Forest lands in Sections 10, 11 and 15, T2N, R86W. As more definitely shown on a map attached hereto and made a part of this Permit and on file at the Forest Supervisor's Office, Steamboat Springs, CO.

This permit covers 4.2 acres and/or 1.75 miles and is issued for the purpose of:

Maintaining an irrigation ditch with tributaries from Mill Creek, a tributary of South Hunt Creek, to private lands of the permittees.

This permit supersedes the permit dated 8/4/66, Mill Creek Ditch to Redmond, William, James and John and Russell, Richard.

1. Construction or occupancy and use under this permit shall begin within in place months, and construction, if any, shall be completed within --- months, from the date of the permit. This use shall be actually exercised at least 60 days each year, unless otherwise authorized in writing.

2. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, the sum of sixteen dollars & seventy cents Dollars ($ 16.70) for the period from March 1 1979, to December 31, 1979, and thereafter annually on January 1

Twenty Dollars ($ 20.00):

Provided, however, Charges for this use may be made or readjusted whenever necessary to place the charges on a basis commensurate with the value of use authorized by this permit.

3. This permit is accepted subject to the conditions set forth herein, and to conditions 18 to 26 attached hereto and made a part of this permit.

	NAME OF PERMITTEE	SIGNATURE OF AUTHORIZED OFFICER	DATE
PERMITTEE	John Redmond Truman V. Yowell	John M. Redmond TITLE Owners	
ISSUING OFFICER	NAME AND SIGNATURE By Jack Weissling	TITLE Forest Supervisor	DATE 3/1/79

(CONTINUED ON REVERSE) 2700-4 (7/71)

4. Development plans; layout plans; construction, reconstruction, or alteration of improvements; or revision of layout or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; *provided* that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

5. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

6. This permit is subject to all valid claims.

7. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

8. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

9. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the National Forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

10. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

12. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

13. This permit is not transferable. ~~If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner provided is qualified as a permittee and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises may be authorized by permit to him if, in the opinion of the issuing officer or his successor, issuance of a permit is desirable and in the public interest.~~

14. In case of change of address, the permittee shall immediately notify the forest supervisor.

15. The temporary use and occupancy of the premises and improvements herein described may be sublet by the permittee to third parties only with the prior written approval of the forest supervisor but the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

16. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

17. In the event of any conflict between any of the preceding printed clauses or any provisions thereof and any of the following clauses or any provisions thereof, the following clauses will control

GPO 914-673

18. A service charge in addition to the regular fees shall be made for failure to meet the fee payment due date or any of the dates specified for submission of statements required for fee calculation. The service charge shall be one (1.0) percent per month of the fee from the date statement and fees were due or $15, whichever is greater. If a due date falls on a nonworkday, the service charge will not apply until the end of the next work day.

    This permit may be terminated for nonpayment of fees and/or any additional charge for late payment.

19. The permittee shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest Lands under this permit.

20. Avalanches, rising waters, high winds, falling limbs or trees and other hazards are natural phenomenons in the forest that present risks which the permittee assumes. The permittee has the responsibility of inspecting his right-of-way and immediately adjoining area for dangerous trees, hanging limbs, and other evidence of hazardous conditions and, after securing permission from the Forest Service, of removing such hazards.

21. No waste or byproducts shall be discharged if it contains any substances in concentrations which will result in substantial harm to fish and wildlife, or to human water supplies.

    Storage facilities for materials capable of causing water pollution, if accidentally discharged, shall be located so as to prevent any spillage into waters or channels leading into water, that would result in substantial harm to fish and wildlife or to human water supplies.

22. The permittee shall be responsible for the prevention and control of soil erosion and gullying on the area covered by this permit and lands adjacent thereto, and shall provide preventive measures as required by specifications attached to and made a part of this permit.

23. This permit is granted with the express understanding that should future location of Government improvements or road rights-of-way require the relocation of the permittee's improvements, such relocation will be done by the permittee at his expense within sixty (60) days following request to relocate.

24. This permit shall not be exclusive. The Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not interfere with the rights and privileges hereby authorized.

25. This permit confers no right to the use of water by the permittee.

26. Unless sooner terminated or revoked in accordance with the provisions of the permit, this permit shall expire and become void upon issuance of a new authorization or one year after publication of regulations by the Secretary of Agriculture under the provisions of Title V, P.L. 94-579, whichever comes first, but a new authorization to occupy and use the same National Forest Land will be issued provided the permittee will comply with the then-existing rules and regulations governing the occupancy and use of National Forest Lands.

7-26-82

EASEMENT

THIS EASEMENT, dated this _____ day of _____, 1983, from the UNITED STATES OF AMERICA, acting by and through the Regional Forester, Rocky Mountain Region, Forest Service, United States Department of Agriculture, hereinafter called "Grantor," to Truman V. Yowell, John D. Redmond, and James T. Redmond, Yampa, Colorado, 80483 hereinafter called "Grantee."

WITNESSETH

WHEREAS, the Grantee has requested a grant of an easement under the Act of October 21, 1976, (90 Stat. 2776; 43 U.S.C. 1761) and 36 CFR 251.50 (1980), for existing water transmission ditches necessary for the transportation of irrigation water across certain lands owned by the United States in Routt County, State of Colorado and administered by the Forest Service, United States Department of Agriculture.

NOW THEREFORE, Grantor does hereby grant to Grantee, an easement under 36 CFR 251.53(1)(1) for a right-of-way for the operation and maintenance of the Mill Creek Ditch (a.k.a. Luckett-Redmond Ditch and the Boor Feeder Ditch) as located on portions of the following described lands owned by the United States in Routt County, State of Colorado:

Sixth Principal Meridian
T. 2 N., R. 86 W.
Sections 10, 11 and 15

The right-of-way authorized by this easement is 20 feet in width, 10 feet each side of centerline, with such additional width as may be necessary when the water leaves the constructed ditch and follows a natural watercourse, and is to be used for the operation and maintenance of a water transmission ditch and headgate for the irrigation of privately owned land. The right-of-way is more specifically shown on a map entitled "Redmond and Luckett Ditches" prepared 8/14/36 by E. L. Besondy a copy of which is on file with the Forest Supervisor, Routt National Forest, Steamboat Springs, Colorado. The easement areas authorized herein total 1.75 miles in length and 4.2 acres in area.

This grant is made subject to the following conditions applicable to Grantee, its permittees, contractors, and successors in interest:

1. This grant is issued for a period of thirty (30) years ending December 31, 2013, but is renewable provided Grantee will comply with the then existing rules and regulations governing the occupancy and use of National Forest System lands.

If, subsequent to the granting of this easement, the Grantees establish that they or their predecessors in interest had received in grant of the above described easement pursuant to the Act of July 26, 1866 (Ch. 226 14 Stat. 25) or the Act of March 3, 1891 (Ch. 561 26 Stat. 1095) or if Federal Law is enacted which eliminates the requirement that such a ditch crossing national forest land be authorized, this easement will terminate. If Federal Law is enacted modifying the fee charged for this easement or any other requirement in this instrument, this easement will be modified to comply with any such requirement.

2. Grantee will pay to Grantor the sum of Sixty Eight and NO/100 Dollars ($ 68.00) for the period from the date hereof to December 31, 1983, and thereafter annually on January 1 will pay the sum of Sixty Eight and NO/100 Dollars ($ 68.00): Provided, however, that the method of fee determination and/or the annual flat fee may be adjusted by the Grantor as of, and effective on, January 1, 1988, and each five (5) years thereafter in order to place the charges on a basis commensurate with the value of use authorized by this grant.

A late payment charge in addition to the regular fees shall be made for failure to meet the fee payment due date or any of the dates specified for submission of statements required for fee calculation. The late payment charge shall be $20.00, or an amount calculated by applying the current rates prescribed by Treasury Fiscal Requirements Manual Bulletins to the overdue amount for each thirty (30) day period or fraction thereof that the payment is overdue, whichever is greater. If the due date falls on a nonworkday, the late payment charges will not apply until the end of the next workday.

3. This grant confers no rights upon the grantee to the use of water involved; such rights must be obtained according to procedures mandated by State law.

4. This grant is issued subject to Section 13 of the Boulder Canyon Project Act of December 21, 1928 (45 Stat., 1064), and the Colorado River Compact unless exempted by the provisions of the Compact.

5. The grantee shall indemnify the United States against any liability for damage to life or property arising from the Grantee's authorized occupancy or use.

6. This grant is subject to all outstanding valid rights existing on the date of the grant.

7. The privileges authorized by this document shall not be conveyed, assigned, sublet, or otherwise transferred in whole or in part, without the advance written approval of the Grantor.

8. The Grantee does, by the acceptance of this document, covenant and agree for itself and its successors in interest to the property here granted or any part thereof, that the described property and its appurtenant areas and its structures and facilities whether or not the land therein granted will be operated as part of an agricultural irrigation system in full compliance with Title VI of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to the regulations issued thereunder by the Department of Agriculture and in effect on the date of this document to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs or activities provided thereon.

9. The Grantee will protect the scenic aesthetic values and the fish and wildlife habitat values of the area under this grant, and the adjacent land and waters, during operations and maintenance of the authorized use.

10. The Grantee shall not use chemical materials to control undesirable weedy and herbaceous vegetation, aquatic plants, insects, rodents, fish and other pests without prior approval of the Grantor.

11. The Grantee shall take action, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the lands to be occupied under this grant, including making available such construction and maintenance forces and equipment as may be reasonably obtainable for the suppression of such fires. Unless the origin or spread of the fire is determined to be caused by intentional or negligent actions of the Grantee or its agents, the Grantee shall be entitled to payment for such services at those rates then prevailing in the Forest Service for services of a similar character.

12. The Grantee shall take necessary precautions to prevent pollution or deterioration of lands, air, or waters which may result from the exercise of the privileges extended by this grant. The Grantee shall be responsible for securing any permits, certificates, licenses, or other forms of approval required to comply with Federal and State standards for public health and safety, environmental protection, siting, construction, operation, or maintenance.

13. The Grantee shall be responsible for the prevention and control of soil erosion and gullying on lands covered by this easement and adjacent thereto, resulting from the operation or maintenance of the authorized use. Grantee shall so operate and maintain his improvements to avoid the accumulation of excessive heads of water and to avoid damage to streams. Grantee shall take actions as prescribed by the District Ranger to accomplish the purposes of this section.

14. The Grantee agrees to permit the free and unrestricted access to and upon the easement area described at all times for all lawful and proper purposes not inconsistent with the intent of the grant or with the reasonable exercise and enjoyment by the Grantee of the privileges thereof.

15. The Regional Forester may take action to suspend, revoke, cancel, or terminate this easement, (1) upon abandonment, (2) for non-compliance with any conditions of this grant; Provided, however, that the Grantee shall have been given written notice of the grounds for such action and reasonable time to cure any noncompliance. Such action will be in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings and Instituted by the Secretary under 7 CFR 1.130-1.151.

16. Upon abandonment, revocation or termination of this grant, unless the requirement is waived in writing by the Grantor, the Grantee shall, so far as it is reasonably possible to do so, restore the land to its original condition to the satisfaction of the Grantor.

IN WITNESS WHEREOF, the Grantor, has executed this easement pursuant to the delegation of authority to the Chief, Forest Service, United States Department of Agriculture, 7 CFR 2.60, and the delegation of authority by the Chief, Forest Service, United States Department of Agriculture, (47 FR 36465, August 20, 1982). However, this easement shall become effective if, and only if, signed by all the applicants listed below and returned to the Regional Forester within sixty (60) calendar days from date of receipt as shown on United States Postal Service Certified Mail form (36 CFR 251.62).

UNITED STATES OF AMERICA

_____
Regional Forester, Forest Service
United States Department of Agriculture

ACKNOWLEDGMENT

State of)
) SS
County of)

On this _____ day of _____, 19___, before me, _____, a Notary Public in and for said State, with principal office in _____ County personally appeared _____, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

WITNESS my hand and official seal the day and year first above written.

My commission expires:

_____
(Signed)

_____

_____
Notary Public: Please print
name and address beneath signature

This grant of EASEMENT is hereby accepted by the undersigned Grantees on this _____ day of _____, 19___.

_____
Truman V. Yowell

_____
James T. Redmond

_____
John D. Redmond

American Farm Bureau Federation

WASHINGTON OFFICE
600 MARYLAND AVE., S.W.
SUITE 800
WASHINGTON, D.C. 20024
AREA CODE 202 - 484-2222

July 6, 1984

Honorable Malcolm Wallop, Chairman
Public Lands and Reserved Water Subcommittee
Senate Energy Committee
Washington, DC 20510

Re: S. 2692

Dear Senator Wallop:

The American Farm Bureau, our nation's largest organization of farmers and ranchers, strongly supports S. 2692, a bill to exempt water conveyance systems from fees and permits required by the Federal Land Policy and Management Act of 1976.

More than 50 percent of the land area of the 17 Western states is controlled by the federal government. Much of the water used for irrigation originates from snowmelt and rainfall in high-altitude Forest Service and BLM lands. As a result, many of the irrigation systems developed in the West originate on or cross federal lands. Because many irrigation systems were developed long before federal filing fees and permits were required, many of these systems are not currently documented.

Some public land supervisors now claim that irrigation ditches and structures are subject to permits and fees under the Federal Land Policy and Management Act of 1976. About 10,000 miles of irrigation ditches and diversion structures could be affected. Irrigators are being told by BLM and national forest supervisors that they must comply with federal fees and permits or face the loss of the rights-of-way for their irrigation systems. Many of these systems have been in existence long before the Federal Land Policy and Management Act of 1976 (FLPMA). Farm Bureau believes that these actions represent interference by the federal government in individual water rights. It is imperative that federal laws relating to the use of water respect private water rights which have been developed under state law.

S. 2692 would exempt irrigation systems from the permit requirements of FLPMA. It would establish new provisions for recording rights-of-way for irrigation systems and prohibit fees and permits for systems which existed before enactment of FLPMA, October 21, 1976.

We strongly urge your support of S. 2692.

Sincerely,

John Datt

John C. Datt
Secretary and Director
Washington Office

cc: Committee Members

OREGON ASSOCIATION OF NURSERYME
2780 SOUTHEAST HARRISON ST
MILWAUKEE OR 97222 26AM

Western Union Mailgram

4-047[illegible]178 06/26/34 ICS IPMMTZZ CSP WHSB
5036538753 MGMB TDMT MILWAUKEE OR 103 06-26 0420P EST

FTR

ESH JUN 27 11 03 53

HONORABLE MALCOLM WALLOP, CHAIRMAN COMMITTEE
ON ENERGY AND NATURAL RESOURCES
308 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON DC 20510

THIS IS A COPY OF THE MAILGRAM SENT TO SENATOR MARK HATFIELD,
WASHINGTON, DC

DEAR SENATOR HATFIELD

ON BEHALF OF THE NURSERY INDUSTRY OF OREGON, THE OREGON ASSOCIATION
OF NURSERYMEN REMAINS OPPOSED TO THE CONCEPT OF HR-2838 DUE TO THE
INJURIOUS NATURE OF THE BILL TO ALL NURSERYMEN.

WE WOULD LIKE TO SINCERELY THANK YOU FOR YOUR SUPPORT IN TABLING THIS
BILL AND WOULD HOPE THAT THE ORIGINAL LANGUAGE FROM THE BILL WILL NOT
RESURFACE. REGARDS
DAN O BARNHART, EXECUTIVE DIRECTOR
OREGON ASSOCIATION OF NURSERYMEN

16:23 EST

MGMCOMP

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

WASHINGTON STATE NURSERYMENS A
PO BOX 670
SUMNER WA 98390 26AM

1984 JUL 27 AM 10:15

W-0516865178 06/26/84 ICS IPMWTZZ CSP WHSH
2068634482 MGMB TDMT SUMNER WA 82 06-26 0507P EST

HONORABLE MALCOLM WALLOP
COMMITTEE ON ENERGY AND NATURAL RESOURCES
308 DIRKSEN SENATE OFFICE BLDG
WASHINGTON DC 20510

THIS IS A COPY OF MESSAGE SENT TO SENATOR EVANS
DEAR SENATOR EVANS,
THE NURSERY INDUSTRY IN YOUR STATE REMAINS OPPOSED TO THE ORIGINAL CONCEPT OF HR2838, SINCE IT WILL HARM THE EIGHTH LARGEST AGRICULTURAL COMMODITY IN WASHINGTON, WHICH HAS RECENTLY HAD DIFFICULT YEARS, WE HOPE THAT THE ORIGINAL LANGUAGE OF HR2838 WILL NOT BE REVIVED

SINCERELY
STEVE MCGONIGAL, EXECUTIVE DIRECTOR
WASHINGTON STATE NURSERYMENS ASSOCIATION

17:09 EST

MGMCOMP

1

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

CITY OF FORT COLLINS

PUBLIC WORKS & WATER UTILITIES

June 26, 1984

Senator William Armstrong
528 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Senator Armstrong:

This letter is intended to be a statement in strong support of your Senate Bill 2692.

The City of Fort Collins, Colorado is the owner of a transmountain water diversion ditch located at Cameron Pass on Colorado Highway 14 about 70 miles west of the city. This ditch was constructed on government land in 1904 in order to divert excess water from the Michigan River in the North Platte River Basin to the Cache La Poudre River in the South Platte Basin. Approximately 1400 feet of this 5½ mile long ditch now lies in land designated as the Routt National Forest. We have some fear about legislation that would require us to now secure a permit for this ditch.

Your proposed legislation S.B. 2692 goes a long way towards alleviation of those fears, but we would get a great deal of comfort from some minor changes that we would propose in the language. Those minor changes are noted in ink in the attached copy that you find of SEC. 2. (B). The idea of these changes is to exempt an 80 year old ditch from the sometimes unmerciful bureaucracy that we at times find ourselves contending with.

Let me explain. In 1977 or there abouts, we were attempting to secure a permit from the U.S. Forest Service for the reconstruction of Joe Wright Reservoir, a 7,000 acre foot reservoir to be located in the Roosevelt National Forest. In fact, the water from this Michigan Ditch feeds into the reservoir. Upon filing a preliminary request for a permit, we were advised that to get the permit we would be subject to providing a minimum stream flow, which over the course of a year, would exceed the capacity of the reservoir. It is obvious that such a requirement would be absolutely ridiculous, but I took considerable time and effort on our part to get such a requirement waived.

We then were successful and proceeded to get the reservoir permitted and funded. During construction a small land slide occurred at the rim of the construction. The land slide area was about 2½% of the area of the reservoir. We could have used the soil in the slide area in the construction of the dam, however, the permitting agent did not want to see that small scar on the rim of the reservoir or to leave it as it was because if it slid it would raise the level of the water almost a foot, really an insignificant amount. Our work on the dam was halted until we agreed to buttress the slide area to stop its movement. The cost over a years time in construction was several additional millions of dollars.

I trust the above situations gives you some feeling of the fear we have with the Federal Government Permitting Process.

Our ditch was constructed over 80 years ago and has been a true asset to the agricultural and municipal interests of our area. We like your legislation and feel it is in the interest of the people of our area and the State of Colorado. We think it could be better if slight modifications were made as we propose.

Please use these comments in any way you see fit based on your knowledge of our needs.

Respectfully,

Roger E. Krempel, P.E.
Director of Public Works
and Water Utilities

RK/sb

attachment

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. As used in this Act, the term "the Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.).

SEC. 2. Section 501 of the Act is amended by adding at the end thereof the following new subsection:

"(c)(1)(A) There are granted rights-of-way which traverse public lands or lands within the national forest system for facilities and systems for the impoundment, storage, transportation, or distribution of water, as described in subsection (a)(1), constructed prior to January 1, 1985, and in use or placed into use during the period beginning from October 21, 1976 and ending on January 1, 1985.

(B) Grants made by this subsection are supplementary to, and not in lieu of, any other grants made by previous acts. Each such previous grant of right-of-way shall remain in full force and effect unless the holder thereof notifies the Secretary or Secretary of Agriculture, as appropriate, that he elects to be governed by the provisions of this subsection, in which case such previous grant shall be deemed to have been relinquished and shall terminate.

(C) Any grant of right-of-way for an irrigation system described in subparagraph (A) which is based on an Act of Congress enacted prior to October 21, 1976, shall be subject to fees to the United States, or permits or other rights-of-way authorization, only to the extent such payments or authorizations are required by the Act of Congress under which the grant is claimed. No grant issued before October 21, 1976, which is brought under this subsection shall be subject to any fees to the United or to permits or